A

SYLVESTER JOSEPH & OTHERS

v.

B

DIRECTOR OF PUBLIC PROSECUTIONS

[SUPREME COURT, 1972 (Nimmo C.J.), 3rd, 24th March]

Appellate Jurisdiction

C *Criminal law—plea—plea of guilty substituted for not guilty—accused legally represented—claim that freedom of choice destroyed by counsel's advice—Penal Code (Cap. 11) ss.218(2), 277, 360(1).*

The appellants, having pleaded not guilty to charges in the Magistrate's Court reversed their pleas shortly before the hearing, and upon their pleas of guilty were convicted and sentenced to eight months' imprisonment. They appealed on the ground that in advising them that if they D pleaded guilty they would only be fined $100 and that it would be better for them to plead guilty, their own legal adviser had taken away their freedom of choice.

Held: 1. A claim that counsel had exercised undue pressure, beyond the bounds of his duty, on a client so as to make the client feel that he had no free choice but must retract his plea, is a very extravagant pro- E position and one which would only be acceded to in a very extreme case.

2. In the present instance the freedom of choice of the appellants had not been destroyed.

Cases referred to:

F *R. v. Turner* [1970] 2 Q.B.321; [1970] 2 All E.R.281.

Appeal to the Supreme Court from convictions in the Magistrate's Court.

S. M. Koya for the appellants.

G *G. Mishra* for the respondent.

The facts sufficiently appear from the judgment.

24th March 1972

NIMMO C.J.:

H The appellants, the first three of whom are brothers, pleaded guilty in the Magistrates' Court at Suva on 3rd February, 1972 to charges of criminal trespass, assault occasioning actual bodily harm and damage to property contrary to Sections 218(2), 277 and 360(1) of the Penal Code,

Cap. 11 respectively. They were each sentenced to 8 months imprisonment on each charge and it was ordered that the sentences be served concurrently. The circumstances which gave rise to the charges were summarised by the presiding magistrate at the time he passed sentence as follows :— A

"Four ablebodied young men burst into a neighbour's house at about one o'clock in the morning, assaulted the householder and terrorised the occupants including young children. Not content with that they proceeded to smash windows, doors and a refrigerator to the tune of some $150." B

Each appellant appeals on the following grounds :—

(a) that his pleas of guilty were nullities because he had no free choice in the matter;

(b) that the sentences passed on him were excessive. C

It is common ground that when the appellants first appeared in the Magistrates' Court at Suva on the 19th January, 1972 they pleaded not guilty to all charges and that it was only shortly prior to the hearing on the 3rd February, 1972 that they retracted their pleas of not guilty and pleaded guilty instead.

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In affidavits filed in support of these appeals, the appellants, the father of the first three of them, and Mr. Vijai Chand and Mr. Vijay Parmanandam, solicitors with Messrs. Koya and Company who had been instructed to represent the appellants at the hearing, have all sworn that on the day of the trial before the hearing of the charges had commenced Mr. Parmanandam approached the appellants and the father of the first three of them and stated that if they all pleaded guilty to all charges they would only be fined $100 with a substantial part of the fine being paid to witnesses as compensation and that it was better for them to plead guilty than to take the risk of a trial, bearing in mind that certain senior police officers were taking a personal interest in the proceedings. In their affidavits the deponents have also sworn that Mr. Parmanandam informed them that the Police Prosecutor, Inspector Jagnandan, with whom he had had discussions, had agreed with what he had said to them. The first three appellants have further sworn that on Mr. Parmanandam's advice and that of their father they agreed to plead guilty to all charges only on the understanding that they would be fined $100. The fourth appellant has also sworn that he too pleaded guilty on Mr. Parmanandam's advice. E F

In paragraph 3 of his affidavit Mr. Parmanandam has sworn as follows :— G

"That I further say that all appellants did not have a free choice when they entered their plea of guilty."

In paragraphs 8 and 9 of his affidavit Mr. Chand has sworn as follows :— H

"That at the trial none of the four accused admitted the facts as presented by the prosecution in view of the fact that they were not asked.

That I as Counsel for the four accused when asked by the trial Magistrate advised that I was in substantial agreement of the facts. This I did only because I understood that the sentence would be a fine of $100.00 and compensation as aforesaid whereas as far as my instructions went to defend the matter I was aware that the facts as adduced were not admitted by the four accused and in fact the defence version was very much different."

Although I do not think that the contents of affidavits by Inspector Jagnandan and Assistant Superintendent of Police Durswamy Naidu filed in answer to the affidavits hereinbefore referred to have any direct bearing on the question I have to determine I think it should be placed on record that both officers have not only denied that Inspector Jagnandan agreed with what Mr. Parmanandam stated to the appellants but on the contrary have indicated that he was not prepared to bargain with him at all in the matter. It is also common ground on these appeals that no approach had been made by the parties to the presiding magistrate before the appellants changed their pleas. The only issue before me is whether or not the appellants changed their pleas because their freedom of choice had been destroyed by what Mr. Parmanandam, their own legal adviser, had said to them.

In *R. v. Turner* [1970] 2 All E.R.281 at pages 283 and 284 the Court of Appeal stated that a claim that counsel had exercised such pressure on his client, undue pressure, something beyond the bounds of his duty as counsel so as to make the appellant feel that he must retract his plea, that he had no free choice in the matter, is a very extravagant proposition, and one which would only be acceded to in a very extreme case. I respectfully agree with their Lordships and would add that the administration of justice in criminal cases would become farcical if in case after case it were claimed after an accused person had been dealt with on a plea of guilty that his own legal adviser had destroyed his freedom of choice.

In the present cases I have no hesitation in holding that the statements made by Mr. Parmanandam to his clients did not destroy their freedom of choice. They contained no element of compulsion or undue influence on his part. Mr. Parmanandam not having seen the magistrate at that stage did not suggest to them that the magistrate had stated that he would punish them in any particular way. At most he told them what he and, according to him, the prosecutor thought would be an appropriate sentence. Their own common sense should have been enough to tell them that that was all that he was attempting to convey to them. Having done no more than that, he advised them to change their pleas. Whether or not they did was a matter for them. They were free to accept or reject his advice. They choose to accept it.

Mr. Parmanandam, in going beyond a general statement to the appellants that if they pleaded guilty they would be likely to be treated more leniently than if they fought the charges, acted improperly. In attempting to forecast the precise sentence that would ultimately be imposed by the magistrate after he had become acquainted with the relevant facts he was attempting to usurp the function of the court. For the same reason it was wrong for him to express in his affidavit that the effect of his statements to the appellants had been to destroy their freedom of choice. Whether it was or not was the question for the Court alone to determine.

I also find it necessary to draw attention to the extraordinary admission made by Mr. Chand that he informed the presiding magistrate that he was in substantial agreement with the facts as presented by the prosecutor although he knew that those facts were not admitted by his clients and differed very much from their version of what had happened on the morning in question. His explanation for his failure to discharge his duty to his clients by putting their version to the magistrate appears to be that he accepted without question Mr. Parmanandam's attempt to forecast precisely what the magistrate would do after the appellants had pleaded guilty and he had heard the relevant facts. I regret that the behaviour of both Mr. Parmanandam and Mr. Chand impels me to issue a reminder that not only is a high standard of integrity required of those who practise law but there is also rquired of them a highly developed sense of responsibility and an ever present appreciation of the high degree of care they owe to the Court and their clients. The appeals against conviction are dismissed.

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On the other question before me, I do not think that the sentences imposed by the magistrate were manifestly excessive. On the contrary I think that having regard to the violent behaviour of the appellants they were moderate. The appeals against sentence are also dismissed.

Appeals dismissed.

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