SAULA ROKOBUKAI v STATE(AAU0020 of 2011)

COURT OF APPEAL — CRIMINAL JURISDICTION

CALANCHINI AP

19 September, 5 November 2012

[2012] FJCA 81

Criminal law — appeals — appeal against conviction following guilty plea — murder — whether plea of guilty was equivocal — voluntary and informed plea — Court of Appeal Act ss 21(1), 26, 35(1), 35(2) — Penal Code s 22

The appellant pleaded guilty to murder and was sentenced to the mandatory term of life imprisonment with a non-parole term of 12 years. The appellant claimed that his plea of guilty was equivocal, since it was entered on the basis of admissions in the caution interview that were made under duress and threats of violence.

Held –

(1) The appellate court will only consider an appeal against conviction following a plea of guilty if there is some evidence on the record of equivocation. The Court will also consider an appeal when the guilty plea was entered by the appellant as a result of a misunderstanding of the law or under pressure or in the absence of a free and informed decision. The authorities suggest there are other instances when an appellate court may consider an appeal against conviction following a guilty plea. Whether such a basis exists is to be ascertained by examining the record.

Nalave and Marama v The State (unreported criminal appeal AAU 4/06 and 5/06); *Dobui v The State* (unreported criminal appeal AAU 2/99), followed.

(2) There was nothing on the record that would support the appellant's claim that his early guilty plea was equivocal. The record clearly shows that the appellant understood the charge and the consequences of pleading guilty. The appellant admitted the facts that were read out to the judge. His plea was voluntary, informed and made without any apparent inducement or pressure. At no stage in the proceedings did the appellant or his counsel claim that his confession in the caution interview was made under duress or threat of violence.

Application for leave to appeal is dismissed.

A Vakaloloma for the Appellant.

S Puamau for the Respondent.

[1] Calanchini AP. On 10 December 2010 the Appellant pleaded guilty to one count of murder before the learned Judge sitting in the High Court at Labasa. On 15 December 2010 the Appellant was sentenced to the mandatory term of life imprisonment with a non-parole term of 12 years.

[2] A notice of appeal against conviction and sentence dated 7 January 2011 was filed by the Appellant and received by a Registry in Labasa on 13 January 2011. I am prepared to accept that the notice of appeal was filed within the time prescribed by s 26 of the Court of Appeal Act Cap 12, although it was initially delivered to the wrong registry.

[3] In his Notice of Appeal the Appellant raised eight grounds of appeal, seven of which are grounds of appeal against conviction and one relates to the appeal against sentence. In a document filed on 11 July 2012 on behalf of the Appellant by his legal practitioners the following amended grounds of appeal were raised:

"1. THAT the learned trial Judge erred in law in that he failed to consider adequately or at all the law relating to joint enterprise particularly under s 22 of the Penal Code; Cap 17;

2. The learned trial Judge erred in fact in that he failed to consider adequately or at all on the evidence regarding joint enterprise;

3. The learned trial Judge erred in law in that he failed to consider adequately or at all, the evidence to direct himself on the law relating to manslaughter;

4. The learned trial Judge erred in law and fact in that he failed to consider adequately or at all to direct himself on the possibility of manslaughter being an alternative verdict;

5. The learned trial Judge erred in law and in fact in that he failed to adequately direct himself on the requirement to be satisfied beyond reasonable doubt of the guilt of the Appellant, having regard to the evidence alleged and confession to a guilty plea in this case;

6. The learned trial Judge erred in law and in fact in that he failed to consider that the Appellant's right under the Constitution had been breached because he was not afforded reasonable facilities to consult a legal practitioner at the time of his arrest and/or detention;

7. The learned trial Judge erred in law and in fact when he admitted into evidence the caution interview of the Appellant insofar as he;

Failed to consider that the Appellant's admission was due to threats made on the Appellant's life during the interrogation;

b) Failed to consider that the Appellant's guilty plea was equivocal because of the nature and circumstances of a caution interview which was conducted under threat and force; and

c) Failed to consider adequately or at all the facts which led to the unlawful detention of the Appellant on 29th April 2010 to 27 May 2010 and the taking of his statement; and

d) Failed to consider adequately the inducement held out by police officers during the arrest, the interrogation and the promises made to the Appellant before he made his statement and that if he admits and answered all the questions put to her by them he would be released from the police station and custody to return home."

[4] These amended grounds of appeal did not raise any issue in relation to the appeal against sentence. When the application came on for hearing Counsel for the Appellant indicated to the Court that he had instructions from the Appellant (who was also present in court) that the appeal against sentence was not proceeding. The application was now one for leave to appeal against conviction only. The principal claim by the Appellant was that his plea of guilty was equivocal since it was entered on the basis of admissions in the caution interview that were made under duress and threats of violence.

[5] Pursuant to s 21 (1) of the Court of Appeal Act Cap 12 the Appellant may appeal to the Court of Appeal with the leave of the Court against his conviction on any ground of appeal which involves a question of mixed law and fact. In my judgment the principal issues raised by the grounds of appeal involve questions of mixed law and fact. Pursuant to s 35 (1) of the Court of Appeal Act a single judge of the Court has jurisdiction to hear an application for leave to appeal.

[6] The learned Judge described the circumstances of the offence in his sentencing decision and I shall repeat them for the purpose of providing background to the leave application:

'According to the facts admitted by you, your mother-in-law counselled you to kill the victim for having an adulterous affair with your father-in-law. The planning was done a day before the killing.

The victim was 50 years old. She and her 10 year old daughter lived together in the same neighbourhood as yours. On 29 April 2010 at about 3.00am you went to the victim's residence and picked up a binding wire from a shed. You then went and knocked at the window.

You call out to the victim to open the door by threatening her that you were going to break the window. The victim opened the door. You enquired about the whereabouts of your father-in-law. After informing you that your father-in-law had left her home, the victim turned around to close the door. At this point you wrapped the wire around the victim's neck and strangled her. After strangling the victim, you discarded the wire in the garden and left the victim at the same spot where she fell down. The killing was witnessed by the victim's daughter. She was so frightened that she pretended that she was asleep. She went off to sleep and in the morning when the neighbour heard her cry, they came and found the victim dead. You were arrested and interviewed under caution. You confessed to the killing. Post mortem examination revealed that the victim died of asphyxia due to strangulation.'

[7] It is now necessary to consider the position of an appellant who seeks leave to appeal against conviction following a plea of guilty. It is not in dispute that a plea of guilty does not deprive the Court of Appeal of jurisdiction to hear an appeal.

[8] However it is accepted that an appellate court will only consider an appeal against conviction following a plea of guilty if there is some evidence on the record of equivocation. The Court will also consider an appeal when the guilty plea was entered by the Appellant as a result of a misunderstanding of the law or under pressure or in the absence of a free and informed decision. (See: Nalave and Marama v The State; unreported criminal appeal AAU 4 and 5 of 2006 delivered 24 October 2008). The authorities suggest that there are other instances when an appellate court may consider an appeal against conviction following a guilty plea. (See: Archbold 2012 paragraph 7.46). Whether such a basis exists is to be ascertained by examining the record. In Dobui v The State (unreported criminal appeal AAU 2 of 1999 delivered on 27 August 1999) this Court observed:

"The authorities have long established the principle that any question about the propriety of a plea tendered shall be ascertained on the record alone."

[9] The record shows that the Appellant and a co-accused appeared before the learned Judge on 7 December 2010. Both accused were represented by the same Counsel. The Information was read and explained. The Appellant personally indicated that he understood the charge and pleaded guilty. So did the co-accused. The learned Judge indicated to the Appellant and the co-accused that the charge of murder was serious and carried a maximum penalty of life imprisonment. As a result the learned Judge, exercising commendable caution, gave some time to the Appellant to consider the consequences of pleading guilty before his plea was accepted.

[10] On 10 December 2010 the Appellant and his Counsel appeared before the learned Judge. Counsel indicated that she had advised the Appellant of his rights and consequences of pleading guilty to murder. She indicated that the Appellant want to *'make representations to the court in person.'*

[11] The Appellant then said:

"I wish to plead guilty. I am pleading guilty freely and voluntarily. That is without any pressure or promise. I understand the consequences of my guilty plea. Legal Aid can mitigate on my behalf."

[12] The record indicates that the Information was read and explained to the Appellant. The Appellant said he understood the charge and pleaded guilty. The facts were read out by the prosecutor. The Appellant indicated that he admitted the facts. The prosecutor indicated that there was no previous conviction. A written mitigation was read to the Court by Counsel for the Appellant and then handed to the Court. Sentencing was fixed for 15 December 2010. In the written mitigation plea the Appellant relied on his remorse and his early guilty plea as factors in his favour.

[13] There is nothing on the record that would support the Appellant's claim that his early guilty plea was equivocal. It could not be said that the plea was ambiguous. There is no doubt in my mind that the record clearly shows that the Appellant understood the charge and the consequences of pleading guilty. The Appellant admitted the facts that were read out to the learned Judge by the prosecutor. His plea was voluntary, informed and made without any apparent inducement or pressure. At no stage in the proceedings did the Appellant or his Counsel claim that his confession in the caution interview was made under duress or threat of violence.

[14] Although the submission filed by Counsel acting for the Appellant in this application claims that the Appellant was unrepresented, that is simply not supported by the contents of the record.

[15] In his oral submission before me Counsel for the Appellant claimed that there were two caution interviews signed by the Appellant and that the second one, although not read by the Appellant, was different from the first interview. Even if that were correct, neither statement was tendered to the Court. The record shows clearly that the Appellant agreed with the summary of the facts that was read to the Court by the prosecutor during the proceedings in the presence of both the Appellant and his Counsel. There is no merit in this submission.

[16] The written submission filed by the Appellant's Counsel places some reliance on the law relating to joint enterprise. It is clear that joint enterprise was not the basis of the charge against the Appellant. The Appellant was charged as the primary principal participant. The admitted facts clearly indicated that he alone attended at the deceased's home on the night in question. The co-accused was an accomplice and charged accordingly.

[17] In my judgment this application for leave to appeal is vexatious and has no chance of success. The appeal is dismissed under s 35(2) of the Court of Appeal Act.

Application dismissed.