IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)
I N L A U T O K A
Appellate Jurisdiction
Criminal Appeal No. 8 of 1982

Between

R E G I N A — Appellant

- and -

CHANDRIKA PRASAD s/o Suruj Din — Respondent

Mr. S. C. Maharaj — Counsel for the Appellant
Mr. S. R. Shankar — Counsel for the Respondent

J U D G M E N T

The accused was charged in the Magstrate's Court with the offence of throwing an object contrary to section 115 of the Penal Code, the particulars of the offence alleging that on 8th November, 1981 he wilfully threw a bottle at Veebha d/o Parbhu Dass. He was unrepresented and naturally when an accused is unrepresented care should be taken to ensure that he really intends to plead guilty and does unequivocably plead guilty and that the facts as admitted constitute the offence. The plea must be unequivocal and must be seem to be unequivocal. All that is recorded is "Plea - true". With an experienced magistrate one must assume that the accused was properly charged, and the particulars of the offence were read over to him. What was his response? I doubt very much that he merely uttered the word "true". Did he then make it clear that he fully admitted the facts in the charge and wished to plead guilty to the charge? In view of what he said later there must be doubt about this. Because what he said before he was formally convicted was "They were making too much noise and a couple of rockets landed in my flat - didn't aim at anyone." How then could he have pleaded guilty to throwing a bottle at Veebha, an essential element of the charge being the throwing at someone, namely Veebha. At that stage, whatever he had said before it must have been obvious that he was not admitting a vital element of the charge, and either he should have been asked to make it quite clear that this was the position or a plea of not guilty should have been entered.

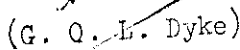
000078

The facts of the case as presented to the magistrate do not support the charge, they merely allege that the accused threw a bottle in the direction of the noise. The record does not show whether the accused was asked if the facts as outlined were correct, but no doubt he would have agreed with them because they seem to tally with what he was saying himself - namely that he was upset by the noise from his neighbour's place, and by the rockets falling in his flat, and threw a bottle towards the noise.

However the magistrate proceeded to convict the accused and sentenced him by binding him over on his own recognisance in the sum of $500. Against this sentence the prosecutor appealed, but at the appeal the accused was represented and with leave of the Court promptly counter-appealed to have the conviction and sentence set aside on the ground that the facts presented to the Court did not constitute the offence charged, and also that even if what the accused said amounted to a plea of guilty it was not an unequivocal plea and should have been entered as a plea of not guilty.

In all the circumstances of the case I cannot agree that the sentence passed by the magistrate was manifestly inadequate, in fact I would consider it to be well within the proper exercise of his discretion. But in any case that is not important now because from what I have said above I consider that the record does not show that the accused unequivocably pleaded guilty to the offence with which he was charged.

I therefore set aside the conviction and sentence with liberty to the Crown to bring the charge again if it so wishes.



(G. O. L. Dyke)
Judge

Lautoka,
1st March, 1982