

Criminal Appeal No: 22 of 1970

Roy Deidenang v. The Republic

19th February, 1971

Plea - accused not legally represented - procedure upon plea of guilty - Court to ensure plea is unequivocal - if dispute over facts constituting offence, plea of not guilty to be recorded.

Legal representation - Article 10 (3) (e) of the Constitution - assignment of counsel by Court at public expense where required by interests of justice.

Appeal against conviction for entering a dwelling house at night with intent to commit a crime therein, upon a plea recorded by the District Court as a plea of guilty. The appellant was unrepresented. Upon the charge being read to him he replied "Guilty". The prosecutor then stated the facts alleged to constitute the offence and read out a statement allegedly made to the police by the appellant. Those facts did not fully constitute the offence nor were the remaining elements of the offence admitted by the appellant in his statement. Nevertheless the Court found the appellant guilty on his plea and convicted him. The magistrate did not inform the appellant of his constitutional right to be legally represented nor did he assign counsel to him.

Held: The plea was not unequivocal and should not have been accepted as a plea of guilty.

Conviction quashed and retrial ordered.

P.H. MacSporran for the appellant

D. Gioura for the respondent

Thompson C.J.:

The appellant was charged before the District Court with entering a dwelling house at night with intent to commit a crime therein. It appears from the record of the proceedings in that Court that, upon being charged and called upon to plead, he replied "Guilty". The prosecuting officer then gave the Court an account of what the appellant was alleged to have done and of a statement which he was alleged to have made after being charged by the police. The acts which he was alleged to have done and the admission which he was alleged to have made did not constitute all the elements of the offence with which he was charged. The magistrate, however, proceeded to convict him on the basis that he had pleaded guilty.

Before an accused person who is not legally represented may be convicted on a plea of guilty the Court must be satisfied that he understands the charge and that he admits, without reservations, the facts alleged to constitute the offence. Where an accused person does not admit those facts without reservations the Court must record a plea of not guilty and proceed to hear the evidence and determine the case on the evidence.

The proper procedure for the Court to adopt after an accused person has been invited to plead and has said that he is guilty, or admits the offence, is to call upon the prosecutor to state what he is alleged to have done. When the prosecutor has done so, the Court must first decide whether, if those facts are true, they constitute the offence charged. If they do not, it must enter a plea of not guilty.

If, however, the facts alleged do constitute the offence charged, the Court must ask the accused whether or not he admits those facts. If he does admit them, it may then properly convict him. If he admits some of the facts but not others, it must consider whether the facts admitted constitute the offence charged. If they do not, it must proceed to hear the evidence. If they do constitute the offence charged, the Court must not immediately record a conviction, as the allegations not admitted may affect the gravity of the offence and have a serious effect on the sentence or order which will follow conviction. The Court must,

therefore, ask the prosecutor whether he will accept that the offence is constituted only by the facts admitted by the accused. If he accepts that, the Court may record a conviction but in determining the proper sentence or order to make must ignore the allegations not admitted and take into account only those admitted. If the prosecutor is not willing to accept that the offence is constituted only by the facts admitted by the accused, the Court must record a plea of not guilty and proceed to hear the evidence.

In this case there was no admission by the appellant of facts which would constitute the offence with which he was charged. A conviction should, therefore, not have been recorded. The appeal must be allowed and the case returned to the District Court for the plea to be taken afresh and, unless there in an unequivocal plea of guilty, for the trial of the case on such evidence as may be adduced.

Before concluding this judgment I have to refer to the submission made by Mr. MacSporran that the appellant's plea was improperly taken because the Court failed to inform him of his constitutional right to be legally represented and to assign counsel to him. I do not propose to deal at length with that submission as this appeal has to be upheld, in any event, on other grounds. It is, of course, necessary for magistrates, and indeed judges, to bear in mind the provisions of Article 10 (3) (e) of the Constitution of Nauru at the commencement, and in the course of, every criminal case before them. In particular they must turn their minds to consider whether it is a case in which the interests of justice require that counsel be assigned to the accused. It is no doubt desirable that they should also ascertain in a criminal case that the accused knows that he may be legally represented if he wishes, although I doubt whether it is necessary for the accused to be asked the question specifically or addressed in terms of constitutional rights or whether failure to ascertain his knowledge of his rights would necessarily vitiate a trial. I do not accept that the interests

of justice require that counsel be assigned in every case other than the most trivial, as suggested by Mr. MacSporran. The American decisions which he cited have not been without their critics, both on and off the American bench; I should be reluctant to take so rigid an approach. In my view, the law must be administered by the Courts with common-sense to ensure that justice is done, justice both to the individual and to society.

The appeal is allowed. The conviction is quashed and the sentence set aside. The case is remitted to the District Court for the appellant's plea to be taken afresh.