



IN THE SUPREME COURT OF NAURU
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 12 OF 2020

BETWEEN

THE REPUBLIC

Appellant

AND

Vianney Debao

Respondent

Before: Khan, J
Date of Hearing: 18 August 2021
Date of Judgement: 24 August 2021

Case may be referred as: Republic v Debao

CATCHWORDS: Guilty plea – Charge of threatening to cause serious harm – Whether the Magistrate was functus officio after a guilty plea was made – Whether the Magistrate was correct to acquit the respondent upon his finding that an element of the offence was not satisfied – The magistrate should have entered a plea on not guilty and set a trial date.

APPEARANCES:

Counsel for the Appellant: Ronald B Talasasa Jr (Director of Public Prosecution)
Counsel for the Respondent: R Tagivakatini (Public Legal Defender)

JUDGEMENT

INTRODUCTION

1. in this matter the respondent pleaded guilty to one count of threatening to cause serious harm contrary to section 92(a), (b), (c) of the Crimes Act 2016 (the Act) in the District Court before Magistrate Lomaloma (Magistrate).
2. After the facts were outlined and the Magistrate was satisfied that all the elements of the offence were satisfied, he made a finding that the respondent was guilty as charged.
3. The respondent's counsel filed sentencing submissions on 30 November 2020 and the matter was adjourned for sentence to 3 December 2020 and instead of sentencing the respondent he delivered a judgement on 3 December 2020 in which he stated at [5] as follows:

[5] One of the inferences we can draw from these actions is that the accused made a threat to his father to stab his father with a fork. A threat can be made by actions or words or a combination of both. This statement in italics might appear on its own to be a threat to the accused's father but to get its true meaning, we must look at the context and it is clear that this action was accompanied by the words, "I will kill myself if you come near me." The true meaning of threat is that it was a conditional threat to cause harm to himself is the condition he was making is met. Again, it fails to meet the requirements of section 92(a) of the Crimes Act with which he is charged that the threat must be to harm either his father or someone else.

4. After he made a finding that the provisions of section 92(a) of the Act was not satisfied, he then addressed himself as to whether he could vacate the plea. He also addressed himself as to the issue of functus officio and came to the conclusion that he was not functus and set aside the guilty plea and acquitted the respondent because an element of the offence was not proved.

REVISIONARY POWERS

5. This judgement was brought to my attention and I invoked the powers under section 59 of the Supreme Court Act 2018 on 16 December 2020 and called for the file to examine the records. Section 55 states:

"The Supreme Court may call for and examine the record of any criminal cause or matter of the District Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to regularity of any proceedings of the District Court."

APPEAL

6. The DPP was not aware that I had called for the file under the revisionary powers and filed an appeal on 24 December 2020. There were numerous grounds of appeal but essentially the main ground of appeal is that the Magistrate erred in making a finding of guilty and later acquitting the respondent; and that if he was not satisfied that an element of the offence was proved then he should have vacated the plea and entered a plea of not guilty and set the matter for trial.

WRITTEN SUBMISSIONS

7. In the submissions filed by the Director of Public Prosecutions and the Public Defender there is consensus that the Magistrate was not functus officio after the guilty plea was entered and if he was not satisfied that an element of the offence was not proved then he should have vacated the plea and entered a plea of not guilty and set the matter for trial.

WHEN DOES A COURT BECOME FUNCTUS OFFICIO?

8. In *S v Recorder of Manchester*¹ the House of Lords held:

“Allowing the appeal, that a Court of Summary Jurisdiction which has accepted the plea of guilty to the offence charged was not in law debarred from permitting (at any time before passing sentence) a plea of not guilty to be substituted.”

9. Lord MacDermott stated as follows at pages 492 and 493:

“On January 23, 1969, this ruling was upheld by a Divisional Court (Lord Parker of Waddington C.J., Edmund Davies L.J. and Caulfield J.). The appellant then appealed to your Lordship’s House by leave of the Divisional Court which certified that a point of law of general public importance was involved in its decision. This point was described in the certificate under three heads, but it will suffice if I mention only the first of these as it poses in general terms the question for your Lordships’ consideration. It reads thus:

“Whether a Court of summary jurisdiction which has already accepted a plea of guilty to the offence charged is in law debarred from permitting a plea of not guilty to be substituted at any time before passing sentence?”

My Lords, the Divisional Court, basing its conclusion on previous decisions, held that the Juvenile Court, having accepted the plea of guilty and reached a finding of guilt was functus of its adjudication and could not go back upon it. The authorities bearing on this conclusion, which with it enshrined what I may refer to as the ‘functus doctrine’, must therefore be examined; but before I come to them it is, I think, desirable to consider two broad prefatory questions. The first is whether decisions such as that under appeal is appropriate or adverse to the proper functioning of the judicial process; and second is whether there is anything in the statutes and regulations governing magistrates’ courts to require or justify such a decision.

¹ (1971) AC 481

As to the first of these questions, the exercise of a complete criminal jurisdiction – and I use the expression to exclude special statutory procedures in which guilt is found by one court and punishment awarded by another – naturally falls into two parts, whatever the status of the court concerned. There is the ascertainment of guilt or innocence; and after that there is a sentencing or determination of what should be done with the guilty. **In a sense these parts are distinct, and the temporal gap between them has tended of recent times, in certain types of case, to become longer as the need for a closer investigation of the convicted person’s health and background has obtained wider recognition.** But that is far from saying that each part stands isolated from and independent of the other. The evidence relevant to the commission of an offence is generally relevant to the sentence. And that part of the hearing which is directed to the sentence may well cast new light on the question of guilt or innocence. **I think it is safe to say that this has long been recognised and that the tenor of English law has been against erecting any barrier between these two parts or stages which would place them, as if it were, in watertight compartments and so reduce the scope of judicial ascertainment and discretion. There must, of course, be an end to all things and any court becomes functus eventually.** But such a platitude does nothing to establish the barrier under discussion which is arbitrary in nature and, in my opinion, prejudicial to the due administration of criminal justice. Every experienced judge knows that, even in uncontested matters, that truth has a habit of emerging in bits and pieces, and that the legal ingredients of the offence charged may not be fully understood by the accused. Pleas of guilty of stealing where there has been no intention to deprive the owner permanently or of receiving where there has been no guilty knowledge at the time of receipt are but notorious examples of what has happened and can still happen through this sort of ignorance or misunderstanding which, be it noted, may not proclaim itself when the plea is made. The risk of this is certainly not rare enough to be left out of account. Legal aid may reduce it, but it would be rash to assume that it will eliminate such mistakes entirely; and it must also be remembered in this connection that quite a number of modern statutory offences are sufficiently complex in their make-up to confuse both the lay and the learned. Once made, a mistaken plea may be properly accepted and the mistake may never stand revealed. But if, as can happen, the truth comes to light during the second stage of the proceedings, when the question of what to do with the accused is under consideration, why should it not be acted upon and a changed not guilty allowed where the interest of justice so require? There is no good reason for thinking that such a cause would create an administrative problem or open the door to a widespread abuse of process. As respects trials on indictment, including trials before justices at quarter sessions, the attitude of the common law on this matter has been clear for generations. **Such a change may, at the discretion of the Court, be allowed at any time before the case has been disposed of by sentence.**” (emphasis added)

10. The Magistrate having expressed reservations as to whether the facts made out the offence was entitled to vacate his plea, as he rightly did so, but he erred when he made finding at [12]:

“The accused is found not guilty and acquitted”.

11. A court can acquit an accused only after a trial and after a plea of guilty. The only option open to the Magistrate was to enter a plea of not guilty and set the matter for trial.

CONCLUSION

12. In the circumstances the Magistrate's finding that the accused is not guilty and acquitted is set aside a plea of not guilty is entered and the matter is remitted to the District Court for a trial date to be assigned.

DATED this 24 day of August 2021

Mohammed Shafiullah Khan
Judge