GUA -v- REGINAM

High Court of Solomon Islands
(Ward C.J.)
Criminal Case No. 13 of 1990
Hearing: 30 July 1990
Judgment: 30 July 1990

J. Remobatu for the Appellant
F. Mwanesalua for the Respondent

WARD CJ: This is an appeal against conviction on two grounds, leave having been given to appeal out of time.

> "1. That in respect of the conviction and sentence under section 266(a)(ii) of the Penal Code, the facts do not disclose an offence and in so convicting the Magistrate erred in law.
>
> 2. That in respect of the conviction under section 266(a)(ii) of the Penal Code the Magistrate erred in law in entering a plea of guilty when your petitioner did not plead guilty to the charge".

I need only deal with the first.

The appellant had, according to the record, pleaded guilty at the lower court and is normally precluded from appealing against conviction now. However, where there is evidence of equivocation in the plea the court will consider that point. Here there is no equivocation on the record but it continues with the facts as outlined to the court by the prosecutor. Those facts relate in some detail to the second charge of fraudulent conversion but do not refer in any way to the first charge of embezzlement.

The learned Director of Public Prosecution points out, correctly, that a plea of guilty is an admission of the essential facts of the charge. That prevents the plea of guilty being equivocal.

It seems to me that the matter goes further than that. The appellant was unrepresented in the lower court. In such a case, it is part of the duty of the magistrate

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to ensure the accused understands the charge before he pleads to it. Equally, it is his duty to ensure that, when the facts are outlined, an offence is disclosed and the accused is clearly admitting that offence. This is especially important on a charge of the complexity of embezzlement.

In this case, there was nothing on which the magistrate could decide. He knew nothing of the offence beyond the particulars of offence in the charge. In those circumstances, he could not know if the plea entered was a proper one and should not have moved to a conviction.

Having reached that conclusion, it would normally be appropriate to remit the case to the lower court with a direction to hear the facts in relation to that count and reconsider conviction and sentence. However, I do not feel that is necessary here. The sentence of three months was made concurrent with a sentence of nine months for the second charge and does not effectively alter the total sentence. I am tempted to add the word "luckily" because there is nothing on the record to suggest the basis on which it was decided to order such a sentence.

In the circumstances, I allow the appeal and quash the conviction on the first charge of embezzlement.

As I have stated, that means I do not need to consider the second ground of appeal. However, I take this opportunity to point out that, where the basis of the appeal is that there was not a clear plea of guilty and it is necessary to call evidence to demonstrate that fact, the evidence it is proposed to call should be submitted to the court and the respondent in the form of affidavits so that, should it be necessary, the respondent can arrange to call evidence in reply or seek the attendance of the deponents.

(F.G.R. Ward)
CHIEF JUSTICE