

BETWEEN : UOTA COCKER - Appellant;

AND : POLICE DEPARTMENT - Respondent.

Counsel : S.T. Fifita for appellant
: Miss Tonga for respondent

Hearing : 5 March 1999

Judgment : 5 March 1999

JUDGMENT

The appellant appeared before the magistrates' court on 2 September 1998 and pleaded guilty to assault. He was not represented. The record shows that the prosecution then gave the facts and counsel for the accused then mitigated. The accused was sentenced to a fine and ordered to pay compensation.

The grounds of appeal challenge two aspects of the conduct of the hearing by the magistrate, but, at the hearing of the appeal, it became clear that the record was inaccurate and that the proceedings were flawed. Counsel for the respondent did not oppose the appeal and agreed that the matter should be returned to the magistrates' court for trial by another magistrate.

The normal rule is that, where there has been a plea of guilty, the appeal court will not hear an appeal against conviction unless there is something on the record that suggests the plea was equivocal. Frequently, the apparent equivocation arises from something said to the court by the accused when he pleads guilty which suggests he is not admitting the offence fully.

In the present case, there is considerable evidence that the record is inaccurate and I shall deal with that later. However, on the part of the record that is not disputed, the appellant is recorded as saying, "she scratched me and again bit me and that was the cause of the assault".

In all cases the duty of the magistrate is to ensure that an unrepresented person charged with a criminal offence, understands both the charge and the proceedings and also that, if he has a defence, he has an opportunity to present it. Clearly, no magistrate can

anticipate every possible defence and explain it to the accused. Once he is satisfied the accused understands the charge he faces and that he has admitted it, the magistrate should proceed to hear the facts and mitigation. However, throughout the trial, he must be alert to the possibility that the accused may not have understood the position properly. If anything comes up in the statements to the court by the prosecution or the accused that might suggest a defence, the magistrate should stop the proceedings and ascertain just what is being asserted. Often a short inquiry will make it plain that the plea is properly entered but in any case where it is not, the magistrate must enter a plea of not guilty and try it as a contested case.

In the present case, the comments by the accused should immediately have alerted the court to a possible defence of self-defence. He should have stopped the case and entered a plea of not guilty. On that ground alone, I am satisfied this was an equivocal plea and I shall allow the appeal and send the case back to the magistrates' court with an order it be tried de novo before another magistrate.

Before I leave the case, however, there are two other matters that came up at the appeal hearing upon which I must comment.

The record of the case is inaccurate. The inaccuracy is unusual. After the prosecution had outlined the facts and the accused had made the short statement set out above, the record continues.

Teisina Fifita (counsel): Sir, I do apologise but I know the accused has no counsel and I wish to state on his behalf.

Court: Yes, counsel.

It then sets out a lengthy plea in mitigation, which is attributed to the same counsel.

Mr Fifita has filed an affidavit in which he states that he was at the same magistrates' court that day to represent someone in a totally separate case. As he had to withdraw from that case, he never even entered the courtroom. He was still standing outside when the appellant approached him and asked him to represent him for an appeal because the magistrate did not want to hear him in court. Mr Fifita accepted the case and they returned to his office. He never entered that courtroom that day.

I ordered an affidavit from the magistrate to try and ascertain what happened. The relevant passage reads;

"The record on the appeal file is correct apart from Teisina Fifita. Teisina Fifita did not represent Uota Cocker."

I find that, with respect, unhelpful. As he had already stated in his affidavit that Uota Cocker was not represented, it is difficult to see just how the comments came to be put down to Mr Fifita. It also fails to give this court any assistance as to who made the lengthy mitigation or if it was made at all. As he could recall the case well enough to

remember counsel was not present despite what was recorded, he must surely have been able to say what were the other inaccuracies.

I am well aware of the difficulties faced by the clerk in the magistrates' court when taking the record but he must ensure that it is accurate. If, for any reason, he is unable to record the proceedings accurately, he must point that out to the magistrate and ask him to allow a break or at least to pause long enough to allow him to catch up.


It is because of the possibility of error or omission that the magistrate is asked to certify the record when there is an appeal. His duty is to check it carefully against his notes and his recollection of the case. He should not certify it if he is not satisfied it is accurate or complete. If he is not so satisfied, he should add a note of his own setting out the points about which he is not satisfied.

The other point is that, although never mentioned anywhere in the prosecution statement of facts, this was an allegation of a joint assault. The other accused pleaded not guilty and was tried and convicted by the same magistrate at a later date. He admitted exactly the same offence as that put before the magistrate in the appellant's case. The appellant was sentenced to a fine and ordered to pay \$200.00 compensation whereas the other accused was sentenced to a suspended sentence and ordered to pay \$50.00 compensation.

I do not know the details of the other trial apart from those told me by counsel at this appeal and so I make no further comment on that sentence. I refer to it simply to ensure that the magistrate who tries this case should be made aware of the fact there was another man involved in the assault and, should the appellant be convicted, of the sentence that was passed on the other man.

Appeal allowed. Proceedings quashed and case remitted to the magistrates' court to be tried de novo by another magistrate.

NUKU'ALOFA, 5 March, 1999.

G. Wand
The seal of the Supreme Court of Fiji is circular, featuring a central emblem with a crown and other symbols, surrounded by the text "SUPREME COURT OF FIJI".

CHIEF JUSTICE