IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION)

CR 479/92, 480/92

POLICE

v

J TAUFAHEMA

Defendant

Mr Appleby for Police
Mr Nicholas for Defendant
Date: 22 June 1992

JUDGMENT OF QUILLIAM J

In this case the Police have laid two informations charging the Defendant with indecent assault and assault on a female. Originally the Defendant pleaded Not Guilty to both. He then later appeared and pleaded Guilty to the lesser charge. The Crown then sought to withdraw that charge as it was considerd there was evidence to go to Court on the major charge. That matter was reserved by the Justice of the Peace for determination by this Court.

This is a case coming before this Court for trial by Judge alone and so there is no indictment but I do not consider that affects the principle involved.

The question is whether, the Defendant having pleaded Guilty to the lesser charge, the Crown may proceed with the major charge.

On behalf of the Defendant Mr Nicholas has argued that unlike the New Zealand Statute, there is under the Cook Islands Legislation no express authority for the laying of alternative charges. It is acknowledged in the present case that the two charges are regarded by the Crown as alternatives. They relate to the same facts. Again I do not think the absence of an express provision in the statute prevents the Prosecution from laying charges which they regard as alternative so long as the facts will support each charge.

I am unable to accept that the Crown must decide on the most serious offence appearing on the facts and lay the information on that offence only. If they were to do so then of course it would always be open to the Court to convict on the lesser offence so long as it was necessarily included in the offence charged.

The usual practice is for the Crown to lay such chrges as it thinks appropriate and to direct its case to the most serious of them where the others are necessarily included in the major charge. If there is then to be a conviction on that major charge no verdict is entered on the others. If the major charge should fail then the other or others successively will need to be considered.

Section 46 of the Criminal Procedure Act 1980-81 provides that the informant may, with the leave of the Court, withdraw any information before the Defendant has been convicted or where he has pleaded guilty, before he has been sentenced. This is what the Crown sought to do in the present case.

That procedure may well be available to the Crown in this case but I think the better course is for the plea of Guilty to be allowed to remain in the meantime and for the Court to decide in due course whether a conviction should be entered on it. If there is a finding of Guilty on the major charge then there should not be a conviction on both.

I do not want to encourage the laying of multiple charges, particularly where the lesser charges are included in the major charge because it is always open to the Court to convict on a lesser charge. Where, however, separate informations have been filed or where there are separate counts in an indictment then I do not accept that it is open to the Accused to plead Guilty to a lesser charge and by doing so prevent the Crown from proceeding on the major charge. If the Crown considers that the evidence justifies the major charge then it must be free to proceed on that and in such a case the Court is not obliged to accept the plea of Guilty on the lesser charge.

As that is the position here the lesser information will not be withdrawn but at the present time no coviction will be entered on it. If there is later a conviction on the major charge then covictions will not be entered on both.

The trial must proceed and it is adjourned to the 30th of June 1992.