IN THE SUPREME COURT OF FIJI

Revisional Jurisdiction No. 17 of 1958

REGINA

v.

RAGHUNANDAN

Plea of accused " guilty " : statement by prosecutor as to facts: accused not asked whether or not he agreed with the facts stated: when conviction should be entered formally: jurisdiction of Magistrate as to sentences: section 12 Criminal Procedure Code.

Held.—(1) When an accused person pleads guilty to a charge and the prosecutor then makes a statement as to the alleged facts, the accused should always be asked whether or not he agrees with the stated facts and his actual reply should be recorded;

(2) A conviction should not be formally entered against an accused unless he agrees to such facts;

(3) A denial of any such facts might well show an intention to plead " not guilty " ;

(4) In any one trial, a Magistrate can sentence an accused on a number of counts to a total of fourteen years' imprisonment;

(5) Adequate sentences should be imposed on each count;

(6) A Magistrate in such cases must make some sentences to run concurrently with others so that the total punishment of physical imprisonment does not exceed twice his normal jurisdiction to sentence, as set out in section 7, 8 or 9 of the Criminal Procedure Code.

LOWE, C.J. [25th June, 1958]—

In these cases the accused was charged with obtaining money and goods by false pretences contrary to section 355 (*a*) of the Penal Code. He pleaded guilty to every offence and the learned Magistrate entered a finding of guilty immediately after each plea had been recorded.

The prosecutor then proceeded to state the facts of each case but the accused was never asked whether or not he admitted such facts. This should always be done as it is possible that a denial of some of the facts might establish the accused's intention of pleading " not guilty ". Furthermore, although it might be inferred from the finding of " guilty " that the Magistrate had formally convicted the accused, in view of the wording of section 211(A) of the Criminal Procedure Code, " and such person is convicted by such Magistrate's court of that offence ", it is necessary to enter a formal conviction. This should never be entered until after the accused has been asked whether or not he admits the facts stated by the prosecutor and his reply has been recorded.

Section 198 (2) of the Criminal Procedure Code is as follows:—

> " If the accused person admits the truth of the charge, his admission shall be recorded as nearly as possible in the words used by him, and the court shall convict him and pass sentence upon or make an order against him, unless there shall appear to it sufficient cause to the contrary."

In view of the words " shall convict him and pass sentence upon or make an order against him, unless there shall appear (to the court) sufficient cause to the contrary " it should be an invariable practice to record a formal conviction as soon as an accused has admitted facts which in themselves constitute sufficient particulars of the offence charged.

In all of the instant cases the Magistrate has committed the accused to this Court for sentence. Subsection (2) of section 211(A) is in mandatory terms and this Court, following such a committal, is to inquire into the circumstances of the case and has power to deal with the offender only in the manner in which he could be dealt with if he had been convicted by this Court. However, I think the instant cases should be dealt with by that court, for reasons which appear later, as the Magistrate has ample jurisdiction.

The provisions of section 12 and, in particular, of subsection (2) of that section are often misunderstood by Magistrates. The subsection is as follows:

> " (2) In the case of consecutive sentences it shall not be necessary for the court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to impose on conviction of a single offence, to send the offender for trial before a higher court:
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> Provided as follows—
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> (*a*) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years; and
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> (*b*) if the case is tried by a Magistrate's court the aggregate punishment shall not exceed twice the amount of punishment which the court is, in the exercise of its ordinary jurisdiction, competent to impose."

It will be noted that proviso (*b*) refers to " punishment " and not to " sentence ".

The trial Magistrate in this case, being of the first class, is authorized by section 7 of the Criminal Procedure Code, to impose imprisonment for a term not exceeding two years. He may also give a further term of imprisonment in default of payment of a fine.

Under section 7, his total jurisdiction for any one offence is two years' imprisonment, a fine of up to £300 or six months' imprisonment in default of payment of the fine.

If an accused is charged on more than one count, the total jurisdiction of a Magistrate of the first class in any one case is limited, by section 12(2) proviso (*b*) to twice the amount of his ordinary jurisdiction, in other words, a total of four years " substantive " sentence and fines totalling £600 or twelve months' imprisonment in default.

Where there is more than one count and each count relates to the same transaction, the total fine should not exceed £300 and, of course, the sentences should be made to run concurrently. An example is one count of breaking and entering and one count of theft from the same dwelling at the same time.

The practice of charging an accused in separate proceedings in order to swell a court's power of punishment cannot be approved in any circumstance, although if subsequent offences become known after the original charge has been laid, it would probably be justifiable to commence further proceedings against him.

Section 12 (2) proviso (*a*) appears to permit a Magistrate to impose sentences up to a limit of fourteen years in any one case, whereas proviso (*b*) limits punishment to twice the amount of the subordinate court's jurisdiction. Interpretation of the provisos often gives rise to confusion. There can be no doubt that proviso (*a*) was never intended and cannot apply to the Supreme Court; this is clear from the wording of the section itself.

To deal with section 12 as a whole: It might advantageously have been drafted in more lucid form but to put it into what I would call " layman's language ", it says, as regards jurisdiction to sentence an accused and cause him to be imprisoned:—

> " 12.—(1) When an accused has been convicted on two or more counts at one trial, the court which tried him can exercise its jurisdiction (received under sections 7, 8 or 9 of the Criminal Procedure Code, as the case may be) in connexion with each count. Sentences so imposed will be consecutive unless the court imposing them directs that they are to be concurrent.
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> (2) When the sentences, or any of them imposed on an accused on each of two or more counts are to be served consecutively it does not matter if the total period to be served by the accused is greater than the Magistrate's jurisdiction under sections 7, 8 or 9 of the Criminal Procedure Code, as the case may be, and he need not, just because they would exceed that jurisdiction, send the accused for trial before a court having greater jurisdiction than he himself has. *But* (whether subsection (1) or subsection (2) of this section applies) in no single trial by a court subordinate to the Supreme Court, shall a Magistrate impose *sentences* in excess of a total of fourteen years' imprisonment on all counts, whether the sentences be all concurrent or partly concurrent and partly consecutive. *Nor*, if the case is tried by a subordinate court, shall the aggregate *punishment* (i.e. physical imprisonment) exceed twice the jurisidiction given to the trial Magistrate under sections 7, 8 or 9 of the Criminal Procedure Code as the case may be."

In this latter case the word *punishment* has been used deliberately and in contra-distinction to *sentence* or *sentence of imprisonment*. It means the period during which an accused undergoes the punishment of serving a sentence of imprisonment or the punishment of a fine, or of a sentence of imprisonment in default of payment of a fine.

To put it, perhaps more plainly, the provisos to section 12, in my view, can only mean that every Magistrate's court can impose up to its normal jurisdiction on each count, but in no one case or trial may it sentence an accused to more than fourteen years' imprisonment whether such imprisonment consists of sentences on each count to run concurrently or some to run concurrently and some consecutively, but the total imprisonment actually to be served must not exceed twice the Magistrate's jurisdiction obtained under sections 7, 8 or 9 as the case may be.

Suitable examples might be:—

1. An accused is charged on ten counts and convicted on all by a Magistrate's court of the first class. Sentences of imprisonment on each count, to run concurrently, or some concurrently and some consecutively, must not total more than fourteen years though there may, of course, be sentences of up to two years on one or more of the counts, but the actual imprisonment must not exceed four years.

2. An accused is convicted by a Magistrate's court of the first class on each of fifteen counts and has sentences of imprisonment imposed as follows:—

Two years' imprisonment on each of the first three counts to run concurrently, two months' imprisonment on each of the next twelve counts to run consecutively.

There it will be seen that the total imposed *sentences* are eight years (within the limit set by proviso (*a*)) but the Magistrate, not having made the consecutive *sentences* run concurrently with any other sentence, the *punishment* or term to be served is two years on the first three counts plus two years on the others and so within the limit of " twice his jurisdiction " set by proviso (*b*). If an accused gets two years' imprisonment on each of three counts, each to run concurrently with the other, his *punishment* is, of course, two years, not six.

It is, in fact, necessary that an appropriate sentence, up to the limit of a Magistrate's normal jurisdiction if warranted, should be imposed on each count for an apparent reason. It would defeat the course of justice if, for instance, a Magistrate were to convict an accused on each of six counts of a serious nature and in order not to exceed his jurisdiction under proviso (*b*) he were to impose eight months' imprisonment on each of six counts to run consecutively. If an Appeal Court were to quash the convictions and set aside the sentences on five of the counts, the accused would be punished by only eight months' imprisonment whereas two years might have been an adequate punishment. If, however, the Magistrate had imposed an appropriate sentence of imprisonment on the count which remained, the accused would receive just punishment for that offence.

An appropriate sentence imposed for each count or offence also results in an accused's criminal record showing a suitable sentence in each case.

I have dealt with the interpretation at greater length than would have been necessary in other circumstances but there would appear to have been much confusion of thought as to the effect of section 12 of the Criminal Procecure Code, and I have thought it necessary to endeavour to put the section in more clear perspective in the hope that, if I have done so, Magistrates will no longer have any doubts about its meaning and intention.

As no conviction has been entered in these cases they are remitted to the Magistrate. His order committing the accused to this Court for sentence is a nullity and the Magistrate is to convict the accused and to try the cases to conclusion.