

A

REGINA

v.

ASERI RARATABU

B

[SUPREME COURT, 1972 (Grant J.), 17th November]

Criminal Jurisdiction

*Criminal law—practice and procedure—rule against duplicity—permissible to include a charge of burglary and one of larceny in the same count—Criminal Procedure Code (Cap. 14) s.212(3), 2nd Schedule, Form 9—Penal Code (Cap. 11) ss.302, 332(a), 332(b) (ii): Criminal law—charge—duplicity—permissible to include burglary and larceny in same count.*

C

As an exception to the general rule against duplicity the offences of burglary (contrary to section 332(a) of the Penal Code) and larceny (contrary to section 302) may be included in the same count of a charge.

Order by the Supreme Court on a case committed for sentence by a magistrate; reported only on a point touching duplicity.

D

R. Davies for the prosecution.

Accused in person.

17th November 1972

GRANT J. :

E

On the 30th day of October, 1972 the accused purported to plead guilty to two counts of Burglary in the First Class Magistrate's Court, Labasa and was committed to the Supreme Court for sentence by the trial Magistrate under the powers conferred by Section 212(1) of the Criminal Procedure Code.

However the record does not show that the mandatory warning was given by the Magistrate to the accused as required by Section 212(3) of the Criminal Procedure Code.

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Moreover, both counts to which the accused purported to plead guilty are defective. The statement of each offence sets out the charge as Burglary contrary to Section 332 (a) (b) (ii) of the Penal Code. Section 332(a) of the Penal Code creates one offence, namely breaking and entering the dwelling house of another with intent to commit any felony therein, whereas Section 332(b) (ii) of the Penal Code creates a separate and distinct offence of breaking out of the dwelling house of

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Penal Code, Section 332: Any person who in the night —

(a) breaks and enters the dwelling-house of another with intent to commit any felony; or

(b) breaks out of the dwelling-house of another, having —

(i) entered the said dwelling-house with intent to commit any felony therein; or

(ii) committed any felony in the said dwelling-house,

H

is guilty of the felony called burglary, and is liable to imprisonment for life.

A another having committed any felony in the said dwelling house. Both these offences cannot be charged in one count. Further, the particulars of each offence are inconsistent therewith and defective as they recite that the accused broke and entered a dwelling house and stole certain items therein.

B If it is alleged that the accused broke and entered a dwelling house with intent to steal therein and did steal certain items therein, then in respect of each count the accused should have been charged with Burglary contrary to Section 332(a) and Larceny contrary to Section 302 of the Penal Code. I refer to Form 9 set out in the Second Schedule to the Criminal Procedure Code, this form of charge being an exception to the rule against duplicity.

C It is the duty of a Magistrate to ensure that charges preferred against accused persons in his Court comply with legal requirements and as the trial Magistrate is not functus officio the case is remitted to him for the charges to be amended and fresh pleas taken.

D Should the accused be thereafter convicted, the trial Magistrate will no doubt consider his powers of sentencing more than adequate in view of the fact that the accused has today been sentenced to four years' imprisonment for a similar offence (Supreme Court Criminal Case No. 21 of 1972).

*Remitted to magistrate.*