Criminal Appeal No. 4 of 1972

Deatag Daragouw v. The Republic

11th September, 1972

Plea - accused not legally represented - Court need not warn of possible custodial sentence before accepting plea of guilty.

Appeal against sentence of 4 months' imprisonment with hard labour for driving a motor vehicle whilst under the influence intoxicating liquor. The appellant was not legally represented. He pleaded guilty and admitted the facts constituting the offence as stated by the prosecutor. The District Court accepted his plea of guilty without warning him that upon conviction a custodial sentence might be imposed.

Held: Generally there is no obligation on a magistrate, before accepting a plea of guilty, to warn the accused that a custodial sentence may be imposed.

B. Dowiyogo for the appellant
D. Gioura for the respondent

Thompson, C.J.:

The appellant was charged in the District Court with driving a motor vehicle whilst under the influence of liquor. He pleaded guilty and was convicted. He was sentenced to serve 4 months' imprisonment with hard labour and his driving licence was suspended for 6 months.

He has appealed against the severity of the sentence. Mr. Dowiyogo, who has represented him at the hearing of this appeal but did not represent him in the District Court, sought, and was granted by this Court, leave to appeal also against the conviction on the grounds that the plea was not properly taken and that the facts stated by the prosecuting officer in the District Court did not establish the offence.

It is apparent from the record that the appellant pleaded guilty after the charge had been read to him in Nauruan and that

the prosecuting officer then stated to the Court the facts which were alleged to constitute the offence. There is no record that the appellant was asked whether he agreed with those facts. The magistrate should have ascertained that and recorded the appellant's agreement, disagreement or qualification of the facts before proceeding to convict him. If the appellant had denied the facts, a plea of 'not guilty' should have been recorded, unless he admitted other facts establishing the offence.

However, Mr. Dowiyogo has not alleged that the facts stated by the prosecuting officer in the District Court were not correct. In those circumstances the failure of the magistrate to ascertain that the appellant agreed that they were correct has not resulted in any injustice. Magistrates should, however, take care to follow the proper procedure as an irregularity of this nature is serious and, if there is any reasonable possibility that it may have resulted in injustice, the conviction will have to be set aside on appeal.

In the present case, however, Mr. Dowiyogo has based his appeal on two different grounds. First, he says that the facts stated by the prosecuting officer do not constitute the offence charged. Although there is no specific statement that the doctor found that the appellant was under the influence of liquor, it is quite clear that he did so find. The words used in the statement were: 'He was examined by Dr. Bill and admitted he had consumed liquor. His ability to drive was impaired'. Doubtless, if there had been a plea of 'not guilty' and Dr. Bill had given evidence, he would have stated the details of his examination and the reasons for considering that the appellant's ability to drive was impaired. But, as a summary of the facts consequent upon the plea of 'guilty' the words used by the prosecuting officer are quite adequate to show that Dr. Bill found that the appellant was under the influence of liquor. He had been driving a motor car and had driven it into a tree shortly before. The statement adequately sets out facts sufficient to establish the offence.

Mr. Dowiyogo's second ground of appeal against the recording of the plea of guilty is that it was contrary to natural justice for the Court to accept a plea of guilty from an accused person not represented by counsel or a pleader in a case in which a sentence of imprisonment might be imposed, without warning him of that possible consequence of his plea. Undoubtedly every Court has a duty to ensure that the procedure which it follows will not unfairly prejudice the accused. There may be cases in which, because of their unusual nature, the accused person may not realise the possible consequences of conviction and in which the Court should therefore explain those possible consequences before taking the plea. But basically what is required in the normal case is that the Court should be sure that the accused person understands the charge, that he makes his plea in the free exercise of his own choice whether to admit having committed the offence or to deny it, and that the plea is not accepted as a plea of 'guilty' unless it is unequivocal.

Driving offences are very common in Nauru, as are convictions of such offences. The population is small and society close-knit. Most people own or drive cars and are well aware of the effect of the laws relating to driving. I cannot, therefore, conceive of any case in which a person charged with one of the common driving offences would suffer any injustice by not being informed of the possible consequences of conviction before his plea were taken. In the present case there was certainly no injustice. The appellant was convicted last year on a similar charge and sentenced to imprisonment and his driving licence was suspended. He was, therefore, well aware from his own experience what the possible consequences were if he were convicted.

The appellant has appealed against the sentence on the ground that it is harsh and excessive. In view of his recent previous conviction for a similar offence, the prevalence of this offence and the serious consequences of bad driving and offences of this nature in Nauru over the past 18 months (4 persons killed and 127 injured in a population of less than eight thousand) the sentence, which was clearly intended by the magistrate to be a deterrent, cannot be regarded as harsh, excessive or wrong in principle.

The appeals against conviction and sentence are dismissed.