ABRAHAM GAMEO -v- COMMISSIONER OF POLICE

High Court of Solomon Islands
(Muria ACJ)
Criminal Case No. 9 of 1992
Hearing: 13 May 1992 at Gizo
Judgment: 14 May 1992

P. Lavery for Appellant
C/Insp. Waitea for the Respondent

MURIA ACJ: The appellant pleaded Guilty to charges of careless driving, using a motor vehicle on the road with no Third Party Insurance and using a motor vehicle on the road without a valid licence. He was fined $150.00 for careless driving, $200.00 for using a motor vehicle without Third Party Insurance and $50 for using an unlicensed motor vehicle. The appellant now appeals against his sentence on the sole ground that the sentence was excessive in the circumstances of the case.

Counsel for the appellant did not press any argument against the sentence of $50.00 fine in respect of count 3. That sentence must therefore stand.

The facts as presented to the Magistrate's Court and accepted by the appellant are that the appellant was driving the motor vehicle Reg. AO937 to District area sometime between 6.30 p.m. and 7.00 p.m. on 10/2/92. Whilst at a sharp bend the vehicle skidded and went off the road. The appellant, with a help of friends, managed to get the vehicle back to the road again and continued his journey. The police had learnt of the accident and investigated the matter. It was found as a fact that the vehicle was owned by Reef Pacific Trading Company Limited and that its licence had already expired. It was also found that the vehicle had no valid Third Party Insurance. The appellant did not know that the Third Party Insurance policy in respect of the vehicle had expired. He only drove the vehicle on order from his employer.

This Court was told that the owner of the motor vehicle had been charged with one count of permitting the use of an uninsured motor vehicle on the road and the other was for permitting the use of an unlicensed motor vehicle on the road. The Court was told that the owner was convicted and fined $200.00 and $100.00 respectively.

As a matter of general principle care should be taken that the punishment should not be out of proportion to the offence. This is the object that a sentencing magistrate or judge ought to have - to ensure the punishment shall fit the offence.

In sentencing the appellant in this case, the learned Magistrate gave the appellant credit for his plea of guilty to all the charges. The record did not show that the learned Magistrate take into account the other matters raised by the appellant in his mitigation. If the learned Magistrate had done so, as it would become apparent later in this judgment, count 2, relating to the charge under section 8 of the Motor Vehicle (Third Party Insurance) Act, 1972 should not have been proceeded with as a guilty plea.

I now consider the sentence of $150.00 fine on count 1 for careless driving. The facts do not show that the accident was particularly a result of bad driving nor was there any aggravating feature in the appellant's manner of driving. Each case of course must be decided in the light of its own facts. In this case the facts do justify the view that a fine of $150.00 is excessive.

I feel the proper fine in this case on count 1 should be one of $100.00.

I now turn to count 2 on the charge under section 8 of the Motor Vehicle (Third Party Insurance) Act. In mitigation the appellant raised the following matters:

> *"The boss of the company told me to drive the vehicle. The vehicle was not mine.*
>
> .....
> .....
>
> *I thought the vehicle licence and Third Party Insurance (TPI) policy had been paid. I am just obeying orders of my bosses."*

When one turns to section 8(3) of the Motor Vehicle (Third Party Insurance) Act, 1972, one sees that the subsection contains a defence in the following terms:

> *"(3) A person charged with using a motor vehicle in contravention of this section shall not be convicted if he proves that the vehicle did not belong to him and was not in his possession under a contract of hiring or of a loan, that he was using the vehicle in the course of his employment and that he neither knew how had reason to believe that there was not in force in relation to the vehicle such a policy of insurance as is mentioned in subsection (1)"*

The record of the proceedings in the Magistrates Court in this case show, and there was no dispute about it, that the appellant was not the owner of the vehicle and that he was driving it in the course of his job and on instruction from his employer. Those facts should have alerted the learned Magistrate that the appellant was in effect raising a defence under section 8(3) of the Act. The appellant was not represented and

would not have been aware of the defence opened to him. But by his mitigation he was clearly raising a defence as envisaged in section 8(3). Having heard that, the learned Magistrate ought not to have accepted the plea f guilty on count 2 and instead, should have entered a plea of Not Guilty on that charge. The same point arose in ***Fanasia -v- DPP (1985/1986) SILR 84*** and in ***Yaneo -v- DPP (1985/1986) SILR 199.*** In the former, Wood CJ stated at p. 86:-

> *"The appellant was not represented at his trial and was not aware of the defence opened to him. Although it is no part of the Court's duty to advise unrepresented accused of all their possible defences to the charge they face nonetheless in the circumstances of this case it would appear that the appellant would have pleaded not guilty to the third count had he been aware of his rights under section 8(3) of the Act."*

The question which the High Court had to decide on appeal in ***Fanasia -v- DPP***, however, was whether or not on the record the appellant's plea of guilty was unequivocal. I think in this case, the Court must also ask the same question as that in ***Fanasia -v- DPP.*** The case of ***Fanasia -v- DPP*** was also considered in ***Yaneo -v- DPP.*** Ward CJ stated at page 200:-

> *"In considering whether an appeal against conviction will lie following a plea of guilty at the lower court, the only question the court must consider is whether the plea was equivocal. Thus the accused cannot simply come to the appellate court and say "**I now want to change my plea to not guilty**". There must be something at the earlier hearing that suggests the plea wa snot an unequivocal admission of guilt. Usually this will only be considered if it is apparent on the record but, in exceptional circumstances, the court will consider other matters that may be thought to show some equivocation."*

and the learned Chief Justice went to say at page 201:-

> *"As the facts are outlined on a plea of guilty, and, in particular, as the accused mitigates, the court must be careful to see that, if any matter, arises which suggests the plea is wrongly made, they should enter a plea of **'not guilty'**".*

The position taken by this Court in this case on count 2 is not part of the appellant's case. However, the powers of this Court on appeal under section 292(1) of the Criminal Procedure Code entitle the Court to exercise those powers and

> *".....confirm, reverse or vary the decision of the Magistrate's Court or may remit the matter .....to the Magistrate's Court or may make such other order in the matter as to it may seem just ....."*

In addition to those powers of this Court on appeal, it would also in my view, be

open to this Court to invoke its supervisory powers under section 84(1) of the Constitution in such cases for the purpose of ensuring that justice is duly administered by the court below. Section 84(1) provides:-

> *"(1) The High Court shall have jurisdiction to supervise any civil or criminal proceedings before any subordinate court and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by any such Court."*

On the record, it is clear that the appellant raised matters which showed that he was asserting a defence. The learned Magistrate should have, therefore, entered a 'not guilty' plea on count 2.

Having found that material error in respect of count 2, it is unnecessary for me to consider the appellant's complaint that the sentence of $200.00 fine was excessive.

I would allow the appeal. I reduce the fine of $150.00 in count 1 to $100.00 and I set aside the conviction and sentence on count 2 and order that count 2 be remitted to be tried on a 'not guilty' plea before a different magistrate.

(G.J.B. Muria)
ACTING CHIEF JUSTICE