

REGINA -v- ISHMAEL MARAWA

HIGH COURT OF SOLOMON ISLANDS.
(KABUI, J.).

Criminal Appeal Case No. 476 of 2004.

Date of Hearing: 18th November 2004.
Date of Judgment: 23rd November 2004.

S. Balea for the Crown.

S. Lawrence for the Appellant.

JUDGMENT

Kabui, J. The prisoner pleaded guilty to one count of causing grievous harm to Mathew Tohe at Kaokaona village on Makira on 28th August 1999, contrary to section 226 of the Penal Code Act (Cap.26) "the Code". The prisoner also did likewise in respect of one count of common assault, contrary to section 244 of the Code committed against the same Mathew Tohe on the same date and in the same place on Makira. The learned Magistrate convicted the prisoner on his own plea of guilty accordingly on the two counts laid against him. The learned Magistrate imposed a sentence of two months imprisonment for common assault and eighteen months imprisonment for causing grievous harm, both sentences to run concurrently. The prisoner filed an appeal against conviction on both counts and sentence on 20th October 2004 praying that the conviction be quashed or set aside or in the alternative, the sentence imposed be reduced. The prisoner was arraigned on 6th October 2004 when he pleaded guilty before the learned Magistrate at Kira Kira, some four years after the commission of the two offences.

A defence revealed on the facts on the record.

The prisoner had been drinking home-made alcohol with others and they were noisy and disturbing in the village. The victim with others in the village came to the prisoner's group and told them to stop misbehaving and to go away. The prisoner then punched one of the men who had come to tell his group to stop and to go away and then challenged the men. The victim then slapped the prisoner. The men kept on moving towards the prisoner with an alleged intention to chase him away. The victim somehow got close to the prisoner and the prisoner grabbed a piece of timber and hit the victim with it. In blocking the piece of timber coming towards him, his left hand broke. The prisoner then ran away. It might have been the case that the prisoner felt provoked because the victim had slapped him moments ago or he might have acted in self-defence. The record is

very clear on the self-defence point raised in mitigation. The prisoner was unrepresented in court when he pleaded guilty to the charges laid against him. This issue of entering a **guilty plea** or **not guilty plea** was recently reviewed in **Regina v. Elliot Mendana, Cyril Viuru, Cecil Barley and Charles Kere**, Criminal Appeal No. 002 of 2000. I need not go through the cases on this point than to repeat that where the accused is not represented by Counsel, the trial magistrate must enquire into the case to ensure that nothing exists which will make a guilty plea a misleading one. (See also **R. v. Gua** [1990] SILR 129). Although there is a brief reference on the record to the charges having been explained to the prisoner before his arraignment, there is nothing more than that to show that the learned Magistrate did properly and adequately explain them in such a way that such explanation was capable of attracting a denial of guilt or a revelation of a defence. The result was that the defence of possible provocation and specifically self-defence surfaced only at the mitigation stage. At that stage, the learned Magistrate should have vacated the guilty plea and entered a plea of not guilty and continued with the trial. That was not done. At least, the defence of self-defence was recorded by the learned Magistrate at the mitigating stage before passing sentence. The question of the case being *functus officio* does not arise in this case. (See **S. v. Recorder of Manchester** [1971] A.C. 481) On that basis, I order that the conviction of the prisoner be quashed and be set aside. I also order that the case be remitted for retrial. The maximum penalty for causing grievous harm, contrary to section 226 of the Code is imprisonment for fourteen years. Although I have not seen the doctor's report, the victim had been attended to by the medical personnel in the Kira Kira Hospital as well as those in the Central Hospital in Honiara. The Court therefore orders that-

1. **The conviction be quashed and set aside;**
2. **The case be remitted for retrial on a date to be fixed.**

F.O. Kabui
Puisne Judge