

PENI WAINIQEQE

v.

REGINAM

[SUPREME COURT, 1968 (Moti Tikaram Ag. P.J.), 30th January]

Appellate Jurisdiction

Criminal law—sentence—indecent practice between males—recent trends—consistency—Penal Code (Cap. 8—1955) s.167.

A sentence of twelve months' imprisonment for the offence of Indecent Practice Between Males was reduced on appeal to the Supreme Court to one of three months'.

Observations on recent trends in punishment for this class of offence and desirability of some measure of consistency.

Cases referred to: *Frances Prem Chand v. Reginam* (1965) 11 F.L.R. 53; *R. v. Richardson* (Revision Order No. 2 of 1965 — unreported); *James Ah Koy v. R.* (Supreme Court Cr. Ap. No. 99 of 1966 — unreported).

Appeal against a sentence imposed by the Magistrate's Court.

Appellant in person.

J. R. Reddy for the respondent.

MOTI TIKARAM J.: [30th January 1968]—

This Appeal is against sentence only and is lodged on the grounds that the sentence is harsh and excessive.

The Appellant pleaded guilty to the charge of Indecent Practice Between Males contrary to Section 167 of the Penal Code, Cap. 8 and was on the 21st November, 1967 sentenced for the said offence to a term of twelve months imprisonment by the Magistrate's Court of the First Class sitting at Nadi. The offence was committed during an evening in November 1967 behind a hedge outside Namaka Workers' Club at Nadi. The other party to the offence, Naibuka Koroi Vateitei, Appellant in Criminal Appeal No. 120 of 1967, was sent to prison for a similar term.

Both persons were under the influence of drink at the time. Neither had any previous convictions. The Appellant in this case was at the time of the offence slightly over twenty-one years of age and Naibuka Koroi was about thirty-two years of age.

There is nothing on the record of the trial Court to show that the Court below enquired into the age and antecedents of the Appellants, although the Sentencing Court was aware that neither of these men had any convictions. I now have the advantage of being acquainted with the background of these two persons.

The Legislature in providing for a maximum sentence of five years under Section 167 of the Penal Code must have viewed with gravity the offence of Indecent Practices Between Males. However, the observations of the immediate past Chief Justice of Fiji (Mr. Justice Mills-Owens) made in a case involving unnatural offences (*Frances Prem Chand v. Reginam* (1965) 11 F.L.R. 53) may be quoted with profit —

A

“Clearly there has been a change in outlook both of the Courts and public with respect to such offences in recent years. Whilst formerly severe sentences were imposed it is not uncommon for such an offender to be bound over on condition of taking medical treatment. Cases where young boys are victims may, of course, require a certain severity. In cases such as the present the offence is one which to a very considerable degree carries its own penalty of ignominy and disgrace.”

B

His Lordship also referred to a number of similar cases in which the Supreme Court had reduced the sentences.

C

The circumstances of this case are certainly not more serious than those found in the case of *Regina v. Richardson* where the Supreme Court in its Revisional Jurisdiction (see Order of Revision No. 2 of 1963) reduced the effective sentence of fifteen months to six months imprisonment. In reducing the sentence his Lordship, Mr. Justice Hammett, took into account the desirability of some measure of consistency in the sentences passed by several Courts in the country for similar offences. The need for sentences to be reasonably consistent and proportionate was reiterated not long ago by the Supreme Court in its Appellate Jurisdiction in a Traffic case — *James Ah Koy v. Reginam* (Criminal Appeal No. 99 of 1966 — unreported).

D

There being no especially aggravating features in this case, either in relation to circumstances or in relation to Accused’s antecedents, to warrant a very severe punishment on a first offender, I am of the view that a sentence of three months imprisonment would be both adequate and consistent. I therefore quash the sentence of twelve months imprisonment and substitute therefore a sentence of three months imprisonment.

E

Appeal allowed.

F

Both persons were under the influence of drink at the time. Neither had any previous convictions. The Appellant in this case was at the time of the offence slightly over twenty-one years of age and Koroiv was about thirty-two years of age.

There is nothing on the record of the trial Court to show that the Court below enquired into the age and antecedents of the Appellant although the Sentencing Court was aware that neither of these men had any convictions. I now have the advantage of being acquainted with the background of these two persons.

H