

IN THE SUPREME COURT OF NAURU

Criminal Jurisdiction

Criminal Appeal No. 22 of 1978

STAN DABUAE

Appellants

v.

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

19th May, 1978 at 3.45 p.m.

In Court

Before Mr. Justice I.R. Thompson, Chief Justice

For the Appellant: Mr. G. Star

For the Respondent: Mr. D. Gioura

Appellant present:

Interpreter: Mr. D.A. Harris, Clerk of Courts

Appeal against severity of sentence.

MR. STAR: The whole trouble was started by the appellant's father. The appellant was married recently. He and his wife have one child. On the day concerned his father was under the influence of liquor. He went and took the child to his house without consulting the appellant. The appellant was very concerned because of his father's condition. He went to his father. The father told the appellant that he (the father) could do what he liked with his grandchild. That caused the appellant to be very angry to the father. The father rang the police. The appellant was still very angry when the police came. Without asking properly the cause of the trouble they tried to subdue the appellant. He was anxious about his child. He resisted.

COURT: But the second offence, the assault, took place at the police station.

MR. STAR: Yes. The appellant is a man who takes time to cool off. He was still very angry.

The sentence passed was too severe, having regard to all the circumstances.

MR. GIOURA: The appellant was arrested for being offensive to his family. At the police station he stated abusive remarks at the police and used obscene language. Very disorderly. The sentence imposed for that offence is appropriate.

The offence of assaulting a police officer in the course of his duties is very serious. The appellant attacked Police Constable Vincent Scotty, and squeezed his throat. He ripped buttons off the officer's uniform. The appellant had been drinking. The sentence for the second offence is not harsh or wrong in principle.

COURT: Where has the appellant been for the last three years? In Nauru?

MR. STAR: He was living in Tarawa.

COURT: How long has he been back?

MR. STAR: 3 - 4 months.

COURT: When did he go there?

MR. STAR: In March, 1976.

COURT: Is he in employment now?

MR. STAR: He is a labourer in Works Department.

COURT: Was he in any trouble in Tarawa?

MR. GIOURA: Not as far as I know.

JUDGMENT:

The appellant, after a poor record for several years, appears now to have kept out of trouble for 3 years. While the offences committed are undoubtedly serious, there appear to have been mitigating circumstances. Although the sentences imposed were not wrong in principle or harsh and excessive, I think that the interests of society may best be served by giving the appellant a chance to continue to keep out of trouble.

Accordingly the appeal is allowed; the sentences are set aside. In respect of the first count it is ordered that the appellant be discharged upon his entering into a recognisance in the sum of \$100 without surety to keep the peace and be of good behaviour for 2 years and to appear before the District Court and receive judgment at any time during that period if called upon to do so. In respect of the second count the appellant is fined \$40; the fine is to be paid to Police Constable Vincent Scotty as compensation for the assault upon him and the damage to his uniform.

I.R. THOMPSON
Chief Justice

19/5/78