REPUBLIC OF NAURU

SUPREME COURT

CRIMINAL APPEAL NO. 20 OF 1981

CRISP ADEANG V. DIRECTOR OF PUBLIC PROSECUTIONS

CRIMINAL APPEAL NO. 27 OF 1981

DIRECTOR OF PUBLIC PROSECUTIONS V. CRISP ADEANG

JUDGMENT

Crisp Adeang has a house in Uaboe District. Early on the evening of 3rd February, 1981, while he was at the Ubenide Club, two young friends set up loudspeakers outside his house, facing across the road towards where other persons had set up other loudspeakers. Each group then operated equipment which caused a high volume of sound to be emitted by the loudspeakers. It disturbed the quiet of the night. A neighbour phoned the police and complained; in response police officers went to the scene and told both groups to reduce the volume of the sound emitted by their loudspeakers. They did so. Some hours later the same lady phoned the police again; it was then 4 a.m. Police officers again went to the scene; they found that the volume of the sound coming from the loudspeakers outside Crisp's house had been increased again. They told the two young men who were operating the equipment to switch it off, and they did so.

By that time Crisp was at his house; he had been drinking. He took offence that the complaint had been made to the police and not to himself. So, when the two young men switched off the equipment, he called out to them to switch it on again. One of the police officers, P.C. Nelson Tamakin, went to remonstrate with him. Crisp continued to incite the two young men to switch the equipment on again in defiance of the constable's instructions. P.C. Tamakin then told Crisp that, if he did not desist, he was going to arrest him for offensive behaviour. Crisp did not desist; the constable tried to arrest him. Crisp objected to being arrested; he resisted P.C. Tamakin's effort to take him into custody. A struggle ensued, blows were exchanged and Crisp's brother, after initially attempting to restrain Crisp, joined in on his side. Meanwhile the only other police officer at the scene had left it to phone for assistance. In the course of the fight P.C. Tamakin received several minor injuries and his shirt was torn.

Crisp and his brother were subsequently charged with assaulting a police officer in the execution of his duty, an

have been bad for duplicity. If Crisp had been charged with wilfully obstructing P.C. Tamakin, his incitement of those operating the noise-making equipment to defy the constable would have justified his conviction; but he was charged not with wilful obstruction but with assault. The danger of the approach taken by the learned resident magistrate of considering Crisp's guilt in respect of offences not charged is that, having found that Crisp was guilty of wilful obstruction, he may have not have addressed his mind to the question whether the force which Crisp subsequently used against P.C. Tamakin was unlawful and constituted an assault.

In dealing with the third count, offensive behaviour, he found simply that "both the accused indulged in offensive behaviour that night in a public place". He did not indicate whether he found that offensive behaviour to have preceded the use of force by Crisp against P.C. Tamakin or to have been constituted by what took place during the fight. As the finding related to Crisp's brother also, and he had done nothing which could have been categorised as offensive behaviour until after the fight had started, it seems likely that the findings related to the latter time rather than the former.

It is necessary, therefore, to ascertain whether, before P.C. Tamakin tried to arrest Crisp, Crisp had been guilty of an arrestable offence and whether either that offence was the offence of offensive behaviour in a public place or the constable, although calling it offensive behaviour , made clear to Crisp what the offence actually was. To ascertain those matters the facts must be examined. The learned resident magistrate believed P.C. Tamakin and disbelieved Crisp, where their evidence conflicted. P.C. Tamakin gave evidence that, at the time when he was speaking to those operating the loudspeakers, Crisp approached him, was intoxicated and insisted that the police ought not to interfere with their operation as it was his place. He was upset that the neighbours had complained to the police instead of to himself. He refused to "pack up the music" as requested by the constable and insisted that it be continued. The constable then told him that, if he did not comply, he would arrest him for offensive behaviour.

It is, I consider, quite clear that P.C. Tamakin was telling Crisp that he was obstructing him in the execution of his duty and that he would arrest him for doing so unless he desisted. If, therefore, Crisp was, in fact, obstructing him in the execution of his duty, the attempted arrest was lawful. There is no doubt that Crisp was obstructing P.C. Tamakin in

the execution of what he thought were his duties. The only question remaining is whether he was in fact in the execution of his duties. Crisp clearly thought that he was not, because the loudspeakers were on his land. He thought that he could do what he liked on his own land regardless of the inconvenience and annoyance which it might cause to neighbours, and that, if the neighbours wished to complain, they should do so to him. It was no part of the duties of the police, he apparently considered, to interfere in what he regarded as a private matter. However, he was wrong. Section 5(b) of the Police Offences Ordinance 1967 makes disturbing the public peace a criminal offence, one for which the offender can be arrested without a warrant. I shall deal in more detail with the meaning of "disturbing the public peace" when considering the appeal by the Director of Public Prosecutions in respect of the fourth count. It is sufficient at this point to state that the emission of the loud sounds from the loudspeakers at 4 a.m. was undoubtedly a disturbance of the public peace. Whether Crisp had caused that emission or not, he was obstructing P.C. Tamakin when the constable was taking steps to prevent the continuation of the offence of disturbing the public peach. P.C. Tamakin's attempt to arrest him was, therefore, lawful and the force Crisp used to resist arrest was unlawful. He was guilty of assaulting P.C. Tamakin in the execution of his duty. His appeal against his conviction on the first ground is, therefore, dismissed.

In respect of the second count, Mr Dowiyogo has submitted that there was no evidence which established either that Crisp tore P.C. Tamakin's shirt or that he and whoever did so had a common intention to do so. There was certainly no evidence as to who tore the shirt. It was torn during the fight but there is no record of how. Crisp's brother was also involved in the fight; he could have torn it. Undoubtedly, once he had joined in the fight on Crisp's side, they had a common intention to assault P.C. Tamakin. But there was no evidence that that they had any actual common intention to damage his shirt. Unless, therefore, intention is to be imputed to them on the basis of a reckless disregard of a risk (in the same manner as an intention to assault was imputed in R. v. Venna [1975] Q.B. 421), the intention necessary to establish the offence of wilfully damaging the shirt has not been proved. Before an intention can be imputed by reason of the reckless disregard of a risk, it must be established not simply that a reasonable person would have been aware of the risk but that the accused person himself was aware of it. Such awareness may be inferred, in an appropriate case, from the accused person's

issued as Crisp obviously has property (i.e. amplifiers, loud speakers, etc.) to a value well in excess of $200.

I.R. Thompson

CHIEF JUSTICE

17th November, 1981