Lamé, 9. 676

IN THE SUPREME COURT OF PAPUA NEW GUINEA

CORAM : FROST, SPJ.
Tuesday,
21st March, 1972

GABRIEL POLENEU
Appellant

- and -

JAMES POAMBO
Respondent

REASONS FOR JUDGMENT

1972
Mar. 15, 21.

RABAUL

Frost, SPJ.

This is an appeal brought by the appellant against his conviction by the Manus District Court at Lorengau on 23rd November, 1971 for that on 20th November, 1971 at Ponam Village he did behave in a threatening manner towards another person, to wit, Michael Vee, thereby contravening Section 30(a) of the Police Offences Ordinance 1925-1955, whereby the appellant was sentenced to three months imprisonment. In fact the appellant served one month's imprisonment before his release on bail. From the record of proceedings the appellant denied the offence and a plea of not guilty was entered.

The grounds of appeal are:-

1. There was no evidence or not sufficient evidence to support the conviction.

2. The Magistrate erred in law in that he did not rule at the close of the prosecution case that there was no case for the defendant/appellant to answer.

3. The sentence imposed was excessive.

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Frost,SPJ.

The facts of the case, as appears from the evidence of Sub-Inspector Vee, who was the only witness, are that on 20th November, 1971 a party of police under the command of Sub-Inspector Vee left Lorengau for Ponam Island and arrived at the Island about 8.30 a.m. on 23rd November. The police were concerned to execute twenty-seven warrants on certain persons who had not paid council tax and to investigate other matters. The party then walked to the Government Rest House at the village where there was a crowd of local people. Sub-Inspector Vee spoke to one man, who began shouting, "the police are here to fight". The Sub-Inspector then heard a voice behind him, saying "I want to see the Police Inspector". He then turned his eyes on the man talking to him, and he saw the appellant, who was holding an axe. The appellant lifted the axe up and said,"Come here, I want to talk to you". Sub-Inspector Vee said to him, "If you want to talk to me come in front and speak to me". The appellant came in front of Sub-Inspector Vee with his axe on his shoulder. He was asked what he wanted to see the Sub-Inspector about and he then said, "This island is not communist where you can take people wherever you want them". A policeman then moved to the defendant and grabbed the axe and took it away from him.

It is convenient at this stage to consider the first ground of appeal. Counsel for the appellant submitted that to establish proof of the offence it was necessary for the informant to prove, first subjectively, that Sub-Inspector Vee considered that the appellant had behaved in a threatening manner towards him, and also objectively that the appellant's behaviour was calculated to appear threatening in the mind of a reasonable person and not merely a thin skinned person. As there was no evidence, counsel submitted, that Sub-Inspector Vee considered the appellant's behaviour to be threatening to him, for that reason there was insufficient evidence to support the conviction. However, in my

opinion, a prosecution does not fail if there is no such evidence. The sole test is whether the defendant's behaviour was calculated to appear threatening in the mind of a reasonable person. Of course, if the person involved said that in his opinion the defendant's manner was not threatening, this would normally be a telling fact in favour of the defendant.

Counsel for the appellant then argued that there was insufficient evidence upon this objective test. He pointed out that Sub-Inspector Vee told the appellant to come before him, which he submitted indicated that he did not feel threatened. The axe was lowered to the shoulder and there was no evidence whether the blade pointed towards the respondent. But the Sub-Inspector may well have acted as he did to give the impression that he felt no fear, and in my opinion, there was ample evidence of the appellant wielding the axe in a threatening manner so as to support a case for the appellant to answer.

The appellant then gave evidence, which served only to confirm his commission of the offence. He said that whilst at his house, he heard people shouting, "The Committee man is arrested". He then ran towards the Rest House and saw that many people standing around the police were already holding axes in their hands and so he ran back to his house and picked up his tomahawk. His evidence as to what then occurred was substantially the same as Sub-Inspector Vee's. He admitted that when he stood before the Sub-Inspector he was still holding his axe in his hand. Indeed, his guilt was put beyond doubt by his admission in cross-examination that his reason for bringing his axe was that he saw the people were angry and armed with axes, and he wanted to join in the fight as well, and that he had armed himself with an axe so that the police would be afraid of him and not arrest him. It was thus a reasonable inference from his evidence, upon the criminal onus, that his state of mind continued during his confrontation with Sub-Inspector Vee. The evidence shows that the appellant deliberately adopted a threatening manner.

In my opinion, therefore, the appellant was properly convicted and the appeal against conviction fails.

Counsel for the appellant then submitted that the sentence was excessive, not only upon all the facts, but also because the appellant was singled out and punished more severely than otherwise he would have been because he was a teacher and leader in the community and, therefore, ought to have known better. I consider that there is some force in this criticism, but on the whole I find that the sentence imposed at the time was not excessive. The Magistrate has had long experience in this country and properly took into account that Sub-Inspector Vee and his party of police were faced with a crowd of men armed with axes, whom the behaviour of the appellant could well have inflamed to violence. However, it is a different matter whether at this stage, three months after the release of the appellant, I should order him to be returned to custody to serve the balance of the sentence. Unfortunately because of the difficulty in arranging prompt hearings in distant parts of the Territory, this Court is from time to time faced with this problem. In the circumstances of this case, I consider that for the appellant to be returned to custody would be, in effect, to inflict punishment additional to that ordered. Further for a man in the position of a teacher to be committed to custody for the period served should have proved of significant influence upon himself and his future actions, and should sufficiently serve as a deterrent to the villagers. I have, therefore, decided to allow the appeal as to sentence and order that there be substituted for the sentence imposed, the term of imprisonment actually served.

Appeal as to conviction dismissed, conviction affirmed, substitute for the sentence imposed the term of imprisonment actually served.

Solicitor for the appellant - W.A. Lalor, Public Solicitor

Solicitor for the respondent - P.J. Clay, Crown Solicitor