

IN THE SUPREME COURT) CORAM: RAINE, J.
OF PAPUA NEW GUINEA) Monday,
30th April, 1973.

THE QUEEN v. AZENA DUNA of Maiaina
JUDGMENT ON SENTENCE

1973
Apr. 27,
30
POPONDETTA
RAINE, J.

The prisoner has been charged under two indictments, which I have called No. 1 and No. 2. The Crown and the accused, very sensibly, agreed that the two be heard together and, in addition, that a number of other charges be taken into account.

No. 1 is a charge under Section 355 of the Criminal Code. The section reads:-

"355. Deprivation of liberty. - Any person who unlawfully confines or detains another in any place against his will, or otherwise unlawfully deprives another of his personal liberty, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years."

No. 2 is a charge under Section 92, the relevant part of which reads:-

"92. Abuse of office. - Any person who, being employed in the Public Service, does or directs to be done, in abuse of his office, any arbitrary act prejudicial to the rights of another is guilty of a misdemeanour, and is liable to imprisonment for two years."

In fact this indictment contained six counts, all concerned with the same offence, namely, holding an illegal court and levying fines. The Crown only asked that a general admission be made as to counts two to six, and that they be taken into account.

I do not intend to set out the facts in great detail, because there is no conflict. The

1973

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v.

Azena Duna

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simple fact is that the Councillors and Committee were dissatisfied with sentences on adultery charges heard in Popondetta. They strongly urged the prisoner to run his own courts, and this he did, and he became policeman, judge, collector of fines, and gaoler.

Having read the depositions, which were most carefully taken, and considered what the prisoner said on the allocutus, and the evidence of Mr. Webster, I have no intention of sending this man to prison.

I was particularly impressed with Mr. Webster's evidence. I have no doubt that he, as an A.D.C. in his fourteenth year in the Service, would not find that which was done as very amusing. It would cut right across his authority. Senior D.D.A. officers without exception, give me assistance I value very highly. They know their people and are generally objective in talking about them. Mr. Webster was obviously a man who knew his people, he was sincere, he knew the prisoner well, and I thought he had a good grasp of the problem and was objective in his approach.

What does this witness say about the prisoner? Mr. Webster, who knows the prisoner well, tells me that he has been an excellent "bush policeman". Mr. Webster obviously likes and respects the man. I might add, for what it is worth, that the prisoner behaved with great dignity in my court, he has a good presence.

I take the view that the prisoner, despite his training, and his long years of service, was overborne by councillors and committee-men. In my opinion he broke the law because the pressures put upon him, in his somewhat lonely post, were, as Mr. Webster said, "intolerable". It is indeed, a pity, many years of good and blameless service spoilt because of pressures that are hard to comprehend, but which do exist.

This was not in any way a case where a bush policeman behaved like a small dictator. As far as I can see he was not acting viciously. What was done

was utterly wrong, but the prisoner was pushed into doing it by senior villagers. The people fined, and those detained had no complaint. If they had been dealt with properly the result might have been much the same. Those detained were fed, and fed three times a day.

As against all this, unlawful courts cannot be tolerated. What chance has the man who is wrongfully imprisoned? To whom can he go? Whom can he call in aid? If it is a court in a village where all are against him, what hope has he? What chance have I, as a Supreme Court Judge, to assist him? I will probably never hear of his case. There is no appeal.

One of the great features of the law is that superior courts are always available to quash the findings of inferior courts or bring up, into the higher jurisdiction, the proceedings of lower courts.

The loss of this privilege to a community is the loss of freedom. To me, there is no freedom, and anarchy is the rule, when a superior court is unable to intervene. Informal courts, particularly here, are very dangerous, where society is fragmented. Loyalty to their line and the line point of view makes the informal judges suspect. A trial held by judges such as these does not ensure that witnesses will do their best. I have nothing against village or group courts under the law, but even in such a case the Supreme Court must be able, and ready, to correct misconduct and serious error of law.

We have here, in one area, as I well know, an informal unauthorised, but highly organised system of justice. Nothing has, as yet, been done to put an end to this. Here, a long time police officer, and a good one, went wrong under pressure. But when he went wrong he behaved, so far as his prisoners were concerned, in a decent way. There was no brutality or unnecessary toughness. His prisoners, and those he purported to fine, accepted their lot. The prisoners were treated well. This does not alter the fact that what the accused did was dangerous and wrong, and he well knew it was wrong.

But I see no reason, particularly in view of inaction about much more formalized and organised courts in another place, to send this essentially decent man to prison because of the stupid crimes he committed under great pressure. In my opinion his long and excellent service outweighs considerations such as the deterrent factor.

I order the prisoner to pay a fine of \$25.00 within two months, in default two months imprisonment with hard labour.

In addition I order him to enter into a recognizance to be of good behaviour for a period of eighteen months, in the sum, not in cash, of \$25.00. In default of so entering into a recognizance, imprisonment with hard labour for a period of six months.

I make no recommendation under Section 111(2) of the Royal Papua and New Guinea Constabulary Ordinance.

Solicitor for the Crown: P.J. Clay, Crown Solicitor
Solicitor for the Accused: W.A. Lalor, Public Solicitor