

Ramsey J.
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IN THE SUPREME COURT }
OF PAPUA NEW GUINEA }

CORAM: Saldanha, J.
Friday,
9th May, 1975.

MOREA LOHIA v. THOMAS HARIA

Appeal 29 of 1975 (P)

1975

Apr. 29
May 9

PORT
MORESBY

Saldanha, J.

The appellant, Morea Lohia, was convicted by the Resident Magistrate at the District Court of Boroko of the offence of unlawfully using a motor vehicle contrary to s.445A of the Criminal Code (Queensland adopted) and sentenced to three months' imprisonment with hard labour. He appeals against both conviction and sentence.

The motor vehicle in question is a Holden Utility owned by a trawler master called David Eric Whittion. On the 31st January, 1975 at about 2.30 p.m. Whittion parked his car outside B.P's Coastal Shipping Office on the wharf and went aboard his trawler to carry out some repairs. He left his car unlocked but removed the ignition key. When he returned at about 4.30 p.m. he found his car missing. He reported the loss to the occupants of a Police patrol car which happened to be cruising by at the time.

At about 4.00 p.m. the same day Constable David Morea of Hohola Police Station saw this car abandoned in Porebada village. When the car was subsequently examined it was found to be extensively damaged and a mark on the ignition switch seemed to indicate that the car was started by means of a screwdriver, a piece of wire or something similar.

As a result of information which Constable Morea received half an hour later suspicion fell upon two youths from Porebada village, one of whom was the appellant. Constable Morea who knew the appellant looked for him and found him at Elevala Co-operative Store on the 1st February. Constable Morea questioned the appellant. The appellant admitted taking the motor vehicle without the owner's consent. In answer to one of the questions the appellant said -

"I had finished school and wanted to go my father to get some money. As I was going down, I saw another boy named Vali Arua. Vali had already stolen the car and called me to go with him. At that time I asked him, 'whose car is it?' Vali didn't say anything. Vali forced me to help him and we drove off to Porebada, and left the car."

The appellant was taken to Boroko Police Station, where he was interviewed by Constable Thomas Haria. The appellant admitted that he and his friend Vali had taken the car from the wharf. He said that the ignition was not locked and they just started it (meaning presumably that they started it without a key). He said that Vali drove the car while he sat beside him in the front seat and that they drove the car to Porebada village where they abandoned it.

There was ample evidence to enable the magistrate to convict the appellant and the appeal against conviction is dismissed.

With regard to sentence the magistrate was faced with a very difficult task. Offences of the type for which the appellant was convicted are very prevalent and call for a deterrent sentence. On the other hand they are committed by youthful offenders and magistrates are understandably reluctant to commit young offenders to prison. In the event the trial magistrate sentenced the appellant to three months' imprisonment with hard labour.

In the proceedings before me Counsel for the appellant put in an affidavit sworn by Mr. Alterskye, the Principal of the Port Moresby Technical College, Counsel for the respondent not opposing.

Mr. Alterskye has sworn that the appellant is a student at his College, that he is a good student, that with reasonable application to his studies he has good prospects of gaining a Form IV certificate at the end of this year and excellent job opportunities thereafter. Counsel for the respondent adopted a neutral stand. He said he was neither denying nor asserting that the sentence was excessive. He left it to the Court to decide.

The trial magistrate appears to have been informed that the appellant was unemployed. Had he known that the appellant was a student he might not have imposed a custodial sentence. For these reasons I suspend the sentence for a period of twelve months from the date of conviction upon the appellant entering into a recognizance in the sum of fifty kina conditioned that the appellant shall be of good behaviour during the period of suspension. The appellant must pay compensation in the sum of forty kina within seven days.

Although I have varied the sentence in this case on the ground that as the appellant is a student detention in prison might mar his prospects of a career in the future, I hasten to add that in the absence here of other forms of punishment such as committal to Detention Centres, Approved Schools, Reformatory Schools, Borstal Institutions etc. which are available in other jurisdictions, a custodial sentence may be the only way of deterring young offenders from thinking that they can commit such offences with impunity.

Solicitor for the Respondent: B.W. Kidu Esq., Crown Solicitor.

Solicitor for the Appellant : N.H. Pratt Esq., A/Public
Solicitor.