WATSON IROMEA -v- REGINAM

High Court of Solomon Islands
(Muria ACJ)
Criminal Case No. 22 of 1992
Hearing: 7 September 1992
Judgment: 7 September 1992

A. Radclyffe for Appellant
J. Faga for Respondent

MURIA ACJ: The appellant was employed as a Security Officer at the Hotel Mendana on 17 February 1990. On that day, he was on duty.

Briefly the factual backgrounds are that on 17 February 1990, at about 8.30 p.m. a group of boys from Bellona entered the Hotel and proceeded to the Hotel Private Bar area. The appellant approached the boys and told them to leave. The boys refused to leave and an argument ensued between them. Consequently a fight broke out between the Bellona boys and Security Officers. The victim who was then standing outside the fence at the Hotel, seeing the fight, climbed over the fence, entered the Hotel and joined in the fight. The victim punched the appellant who then turned around and whipped the victim with a 3" x 1" piece of timber hitting him on the back of his head. The victim sustained a minor injury. The Bellona boys including the victim then ran away from the Hotel.

There appears to have been nothing done about the matter until 15 June 1992 when the appellant was interviewed by the police. This was more than two years later. When he was interviewed the appellant admitted the offence. When he appeared in the Magistrates Court on 22 June 1992, the appellant pleaded guilty and he was sentenced to 12 months imprisonment. He now appeals against that sentence.

Mr Radclyffe submitted that the 12 months prison sentence is not justified in the circumstances of this particular case. Two factors are of concern to counsel and which he said had not been properly taken into account by the learned Magistrate when he imposed the 12 months imprisonment sentence on the appellant.

Firstly, counsel submitted that the offence occurred more than two years ago. There was no justification for the delay and this factor had not been properly accounted for by the Court below.

Having looked at the record, I think the point raised by counsel is a valid one. No account have been shown on the record that the learned Magistrate considered the effect of delay in this case. Whilst delay is not normally a basis for an acquittal it is nevertheless a matter relevant in mitigation of sentence. See *DPP -v- Dao and Dao [1988/89] S.I.L.R. 142, Bati -v- DPP [1985/86] S.I.L.R. 268.* No explanation whatsoever had been given by the prosecution why there was such a delay of more than two years before the appellant was charged with the offence. It is rather surprising to note that the appellant was at the time working for Hotel Mendana and the incident was reported to the police shortly after the incident. Yet nothing had been done (at least nothing that this Court or the Magistrates Court was told) about the matter until 15 June 1992 when the appellant was interviewed. In the Magistrates Court, the appellant stated that he thought the matter had already finished. I do not think anyone in his right sense would blame him for thinking like that in view of the long delay. Unfortunately no consideration had been given to this factor by the learned Magistrate when sentencing the appellant. Consequently the learned Magistrate had clearly overlooked this salient fact which justifies this Court to interfere with the trial Magistrate's discretion in passing the sentence complained of. I do so applying the principle set out in *Saukoroa -v- R. [1983] S.I.L.R. 275* and *Berekame -v- DPP [1985/86] S.I.L.R. 272.* (Both cases followed *Skinner -v- The King (1913) 16 CLR 336*).

The other point raised by Mr Radclyffe is the question of provocation by the victim, particularly so, as he (the victim) was also a trespasser. Thus counsel said the appellant was entitled to use force to evict the provoking trespasser. I accept the victim was a trespasser and that he provoked the fight with the appellant. But the learned Magistrate had taken that into account in his reasons for sentencing and I do not think I can interfere with the sentence on that basis.

Other matters had been urged upon me by counsel in support of the appeal but as I have already found that the trial Magistrate had clearly overlooked a salient factor when he exercised his discretion in sentencing the appellant it is unnecessary for me to consider those other matters.

The appellant had already served two and a half months in prison. That together with the anxiety hanging over the head of the appellant over this matter for over two and a half years is sufficient punishment for this appellant in this case.

Thus I allow the appeal.

I quash the sentence of 12 months imprisonment and substitute therefor such a shorter sentence as would enable him to be released from prison forthwith.

Appeal allowed.

Appellant to be released forthwith.

(G.J.B. Muria)
ACTING CHIEF JUSTICE