

HIGH COURT. Apia. 1958. 21, 28, August. MARSACK C.J.

Escaped prisoner - whether provision of meals and alcohol constituted offence of aiding, harbouring and sheltering.

Dependent on the circumstances, any act by an outside person which makes it easier for an escaped prisoner to remain at liberty would amount to "aiding"; and the provision of meals and alcohol to another knowing him to be an escaped prisoner would constitute "aiding, harbouring and sheltering" within the meaning of section 152 of the Samoa Act 1921.

Defendant convicted.

PROSECUTION for aiding, harbouring and sheltering an escaped prisoner.

Phillips, for defendant.

Cur. adv. vult.

MARSACK C.J.: The defendant is charged with aiding, harbouring or sheltering one Feleti who had escaped from lawful custody, the defendant knowing him to have so escaped. It was admitted at the outset that the defendant knew at all material times that Feleti had escaped from lawful custody.

There is considerable conflict in the evidence, even among the witnesses called for the prosecution. After consultation with the Samoan Judges I find the following facts.

Feleti escaped from lawful custody on the 10th June 1958 and remained at large until he was recaptured by the Police at Aleisa on the night of the 11th of July. For about two weeks prior to his recapture, Feleti had been moving about in the Aleisa area and had been seen on numerous occasions on the property of the defendant and also on that of his neighbour, Frederick Nansen. Nansen reported to the Police on the 7th July that Feleti had been seen in the plantation of the defendant and he was asked to notify the Police if he saw him there again. Nansen saw Feleti in the defendant's house on the night of the 11th July and sent his son to inform the Police. Sub-Inspector Kruse and some constables came to the defendant's house, found Feleti having a meal on the back verandah of the house, and apprehended him after he had again endeavoured to escape.

Although there is some evidence that Feleti was on the defendant's property prior to the 10th of July, there is insufficient evidence of any act of aiding, harbouring or sheltering performed by the defendant until the 10th of July. He was provided with food at the house that evening, and I am satisfied that this was done with the knowledge and approval of the defendant. I also find that the following night, 11th July, Feleti was given a meal with the defendant's knowledge and approval; and was also admitted by the defendant to a drinking party in the defendant's house at which Feleti consumed a quantity of liquor.

The charge is brought under section 152 of the Samoa Act 1921. In its original form, that section merely deals with the offence of rescue or of assisting a person to escape from lawful custody. In 1938, however, the effect of the section was considerably extended by an amendment so that section 152 as so amended now reads -

"152. Every one is liable to imprisonment for two years who rescues any person from lawful custody, whether in a prison or elsewhere, or who assists any person to escape from such custody, or who aids, harbours, conceals or shelters any person who has escaped from such custody, knowing him to have so escaped."

In its original form this section merely deals with the act of escape itself. The 1938 amendment extends the effect of the section so that it includes any

assistance given to an escaped person or any harbouring or sheltering of him after the act of escape has been completed. The question then arises as to whether the provision of meals and of alcohol to Feleti can properly be described as aiding him or sheltering or harbouring him. In my view, the facts which I have found bring the defendant within the scope of the section.

Any act performed by an outside person which makes it easier for an escaped prisoner to remain at liberty would I think, properly be described as "aiding" him. The provision of meals would be one of the most effective methods of assisting an escaped person to remain at liberty. It would be difficult also to contend that the permitting of an escaped person to join a drinking party and to consume alcohol in some quantity at that party, would not fall within the term "aiding, harbouring or sheltering". While in some circumstances the provision of food for an escaped person who was starving might be excused on the ground of humanity, no such excuse is available in the case of the provision of alcohol. It could in fact be argued that to give an escaped person alcohol might well have the effect of hardening his resolution to remain at liberty; and this is one of the things which the section of the statute in my view is aimed at preventing.

For these reasons, the defendant must be convicted. The offence, however, in this case is not a serious one. No active steps were taken by the defendant, in so far as can be gleaned from the evidence, to conceal Feleti from the Police or to frustrate the Police in their efforts to apprehend him. Accordingly I do not find it necessary to impose a sentence of imprisonment.

Defendant will be convicted and fined £5.