AIGA (APELU) v POLICE

Court of Appeal Apia
Ryan CJ, Martin, Dillon J
2 November 1990

PRACTICE AND PROCEDURE - Appeal against conviction and sentence of 6 months imprisonment for aiding and abetting grievous bodily harm.

HELD: Appeal against both convictions and sentence dismissed.

LEGISLATION:

- Crimes Ordinance 1961; Ss 23 (b), (c), 79

Eti for Appellant
Peteru for Respondent

On the 11th March 1988 the appellant Apelu Aiga was convicted of aiding and abetting three police constables in an incident alleging grievous bodily harm to the complainant Tausagi Saletele. At the time the Appellant was a Sergeant of Police.

The facts

On the evening of the 14th March 1987 two Police vehicles were involved in a high speed chase of a truck alleged to be involved in stealing goods from the Apia wharf, and driven by the Complainant. When finally stopped the driver was punched; pulled from his truck; and seriously assaulted by the three police constables. Mr. Saletele was examined by the Surgical Registrar of the Western Samoa National Hospital, Dr Taavao, the following day whose report is as follows -

> "(1) Severe pain on (L) side of chest at the back which was very tender to touch. There is clinical evidence of fracture ribs on the same side with obvious bruise. On deep breathing inside patient screams in pain, coming from the (L) side.

(2) Pain on face mainly on (L) side around the eye. There is bruising of (L) eye with laceration of upper eyelid. Bruises of (L) & (R) eyeball. Tenderness is felt along the lower margin of eye. Abrasion on (L) frontal aspect of forehead.

(3) Pain on chest near base of neck. There was bruises and tenderness shown.
Xrays of chest showed fracture ribs 9th 10th and 11th on (L) side at the back. Xrays of facial bone showed fracture (L) zygomatic arch."

There is no doubt the injuries inflicted upon Mr Saletele were very serious; quite extensive; and callously brutal.

The Hearing

The charge of wilfully and without lawful justification causing grievous bodily harm (s.79 of the Crimes Ordinance 1961) against each of the three policemen; and the charge of aiding and abetting the three policemen causing grievous bodily harm (s23(b) and (c) and s.79 of the Crimes Ordinance 1961) against the Appellant were considered by the Supreme Court on the 8, 9 and 10th March 1988. The decision of the Court was delivered on the 11th March 1988.

The Appellant and the three constables were each convicted; and subsequently they were each sentenced to six months imprisonment.

The Appellant now appeals against both conviction and sentence.

As to conviction

Mr Eti counsel for the Appellant referred to and relied upon five specific aspects of the evidence presented at the trial which he argued established a reasonable doubt about the Appellants involvement in the assaults and consequent liability for the charge of aiding and abetting. He submitted that the Appellant -

1. Did not order the chase of the complainant;

2. Did not order the three policemen to assault the complainant;

3. Was still in his vehicle when the assault was committed;

4. Did not witness the assault;

5. "During the trial, did not have an opportunity to present evidence of what had happened".

It is of course quite incorrect to state that the Appellant "did not have an opportunity to present evidence". As a senior police officer with 15 years experience he was well aware of his rights to give evidence in his own defence. He chose not to. That election not to give evidence is of course his right. It is quite inappropriate however to now claim that he "did not have an opportunity to present evidence".

The Appellant was the senior police officer involved in the incident; there was evidence that he was out of his vehicle and witnessed the assault; and at the trial he was represented by experienced Counsel.

After seeing the witnesses and hearing their evidence the trial judge was clearly satisfied that the Appellant saw the assault being perpetrated; failed to exercise control over his subordinates; and as a consequence aided and abetted the three principal offenders.

Mr Eti has presented to us an impressive array of legal literature and authorities on the law relating to aiding and abetting. For this we are grateful. But no amount of legal authority can provide a defence for the Appellant where the evidence establishes actual presence; at a prolonged and brutal assault; where there was no intervention; and where there were subsequent attempts at concealment.

As was stated in Archibolds Criminal Pleading Evidence and Practice at page 2310 --

> "... the fact that a person was voluntarily and purposely present witnessing the commission of a crime, and offered no opposition, though he might reasonably be expected to prevent and had the power to do so, or at least express his dissent, might in some circumstances afford cogent evidence upon which a jury would be justified in finding that he wilfully encouraged and so aided and abetted, but it would be purely a question of fact for the jury whether he did so or not."

In this case the trial Judge acting without assessors, expressed himself as clearly satisfied that the Appellant was the officer in charge; who knew of the assault; who failed to control his men; and that as a consequence the Appellant aided and abetted the three policemen who committed the assault.

We were unanimous that this appeal against conviction be dismissed. We simply set out here the reasons for the order of the Court already given.

As to sentence

The Appellant on conviction was sentenced to six months imprisonment.

This assault occurred on the 14th March 1987; the sentence was imposed on the 22nd April 1988; an appeal was filed on the same day; it was abandoned on the 6th August 1990; and it was reinstated on the 13th August 1990.

The three policemen charged with causing grievous bodily harm were also sentenced to six months imprisonment. They have not appealed. If they had, this Court would then have had the opportunity of reviewing the adequacy of the sentences imposed on all four policemen, including this Appellant. It is our opinion that the sentence of six months imprisonment for this offence is inadequate. This was a brutal assault; causing severe injuries; and which were quite unjustifiably inflicted on the Complainant.

The maximum penalty for this offence is 7 years imprisonment. However because we are unable to review all sentences imposed, we are constrained to the original sentence imposed by the trial Judge. The sentence of six months imprisonment will not be reduced as pleaded by Mr Eti. The appeal against sentence is also dismissed.

In addition we give notice to the Parole Board that in our opinion the Appellant should not be subject to Parole during the term of six months imprisonment.