

Criminal Appeal No. 6 of 1972

Gama Magin Tsiode v. The Republic

11th September, 1972.

Sentence - drinking under age of 21 - second offence - principles of sentencing young offenders considered.

Appeal against conviction for drinking intoxicating liquor while under 21 years of age. The appellant, aged 18 years, was convicted of a similar offence three months before the present offence. For that offence he was fined \$50. For the present offence he was sentenced to four months imprisonment with hard labour. There was no evidence of habitual heavy drinking.

Held: Where there has not been any persistent flouting of the law or habitual heavy drinking, an offender should not be sent to prison for the offence of drinking under age.

Appeal allowed; sentence set aside and a fine of \$40 imposed.

B. Dowyogo for the appellant

F. Martin for the respondent

Thompson, C.J.:

The appellant was convicted by the District Court of consuming intoxicating liquor as a person under the age of 21 years. He is 18 years old. The offence was committed on 23rd July, 1972. On 15th April, 1972, he had been convicted of a similar offence and fined \$50.

Clearly the fine imposed in April was not a deterrent to his committing further offences of the same nature. Heavy drinking by young people is a serious problem which is causing considerable concern to the more responsible members of Nauruan society. The age at which drinking becomes permissible is fixed at the relatively high age of 21 years, presumably because of the risk that immature youths may become addicted to heavy drinking before they reach an age at which they have acquired sufficient experience of life to

realise the dangers involved. However, one of the problems of prohibiting to one group of the population an activity which other members of society can - and do - engage in freely is that it may make that activity more attractive to members of that group.

It is difficult, therefore, to know how best to deal with youths like the appellant who repeat this particular offence. Without doubt it is in his own interest that he should be deterred from becoming a heavy drinker, but there is nothing on the record to show that he has been drinking either persistently or heavily. This is his second conviction for such an offence; his earlier offences, committed between two and four years ago were of a different nature and were committed when he was between the ages of 14 and 16. He is in regular employment.

Only in exceptional circumstances where no other course is reasonably possible should a young person be sent to prison for this offence if there is no evidence either of persistent flouting of the law or of heavy drinking so that such a sentence is required for the accused person's own protection. The incidence of such cases would probably be reduced if more of the adult members of Nauruan society consciously tried to set their youth an example of restraint in drinking; at present such example is all too rare.

In this case a sentence of imprisonment is not justified. The sentence is accordingly set aside and a fine of \$40 imposed in its stead. In default of payment of the fine the appellant is to serve 2 weeks' imprisonment.