IN THE SUPREME COURT OF NAURU

Criminal Jurisdiction

Criminal Appeal No. 3 of 1976

MORRIS DEMINGAUWE vs Appellant

vs

DIRECTOR OF PUBLIC PROSECUTIONS Respondent

20th May, 1976 at 9.40A.M.

In Court

Before Mr. Justice I.R. Thompson, Chief Justice

For the Appellant: Mr. R. Kun

For lthe Respondent: Mr. L.D. Keke, Legal Officer

Appellant present.

Appeal against sentence. *

KUN: The sentence is too severe. The appellant was charged with speeding and riding an unregistered motor cycle. He was sentenced to 3 months' imprisonment on the first count. His licence was suspended for 12 months. On the second count he was find $10.

He is 20, unmarried, He has been employed by PACCO; is now waiting for employment by the Republic.

The sentence is the maximum which could be imposed. I am not submitting whether the sentence is justified. Instead I am pleading in mitigation. The appellant may miss chance of a job if he is in prison.

He lives in Anetan. If he gets employment, which is likely within the next four days, he will need his motor cycle to come to work.

I wish to caLL a witness to give evidence as to the appellant's character.

ROY DEGOREGORE, Christian, sworn, states (in English):

I live in Anetan District. I am the Councillor for that District, also the senior M.P. for that District. I have been a Councillor since the Council was formed in 1951 and an M.P. since Parliament came into existence in 1968. I am supposed to know all my counstituents.

I have known the appellant since he was born. He has never created any problem in the District. He is not old enough for me to know him well. I have had no complaints about his conduct or behaviour from anyone in my constituency.

NO CROSS-EXAMINATION.

CHIEF JUSTICE

KUN: He is not really a criminal. If imprisoned, he will be classified as such. Imprisonment for traffic offences is a last resort. Speeding is not one of the most serious traffic offences. It is not as serious, for instence, as driving under the influence of drinks, which carries a higher penalty.

KEKE: The appellant has three previous convictions, for speeding on 25/9/74, for speeding on 14/19/74 and for speeding on 18/12/74. He was fined $40, $25 and $60 on those occasions. The present offence is of the same nature and was committed on 16/1/76. The appeallant has raised the issue of his character as relevant to the question of sentence. He has been convicted again for an offence of speeding and an offence of riding an unregistered motor cycle on 19th January, 1976, three days after he was "booked" for the offence in this case.

People can get to work by the Republic's bus if they are employed by the Republic. So the disqualification will not create hardship if he gets work for the Republic.

Speeding is a serious offence, possibly not as serious as driving under the influence, but still serious as a cause of accidents. The appellant has been fined previously; the fines have not deterred him. He is young but many yound people now commit such offences. Other road users are entitled to protection.

Jobs become available from time to time, not only now.

The Nauru Prison is not such that all inmates are hardened criminals.

I ask that the appeal be dismissed.

KUN: I did not call the character witness to show the appellant's character as a driver. I called the evidence to show his general character, in mitigation of sentence.

I do not say that persons without transport cannot get to work; it will make it more difficult to do so.

Fines were imposed for the previous convictions but they were not the maximum, nor was his licence revoked. To go immediately to the maximum sentence of imprisonment is harsh. Such a sentence is the final deterrent. Some lesser deterrent should have been tried at this stage.

JUDGMENT:

The appellant has three previous convictions for speeding. - In this case the speed varied from 70 m.p.h. to 90 m.p.h. over a number of miles. The offence occured at 7 p.m. Judicial notice can be taken of the nature of the roads in Nauru, the fact that the road where the offence occurred is lined with houses and that children play in or cross the road frequently, and that there is considerable other vehicular traffic on that road in most days at 7 p.m. That being so, it is clear that for the appellant to ride his motor cycle on that road at that time at 70-90 m.p.h. was grossly irresponsible, to the degree that it may, in spite of the way in which traffic offences are normally regarded, properly be considered criminal. Clearly a deterrent sentence was required to be imposed. -Mr. Kun has suggested that a lower sentence could have been an adequate deterrent. But in my view, on the facts of this case and the appellant's record of offences of this nature, the sentence imposed was neither wrong in principle nor harsh and excessive and there is no reason why this Court should interfere with it.

The appeal is dismissed.

20/5/76

I.R. THOMPSON
Chief Justice

* (Sentence: 3 months' hard labour for speeding).