

IN THE SUPREME COURT OF NAURU

Criminal Jurisdiction

Criminal Appeal No. 8 of 1978

MYRNA DOGUAPE

Appellant

v.

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

16th May, 1978 at 2.45 p.m.

In Court

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

For the Appellant: -

For the Republic: Mr. D.G. Lang, D.P.P.

Appellant present.

Interpreter: Mr. Alec Harris, Clerk of Courts

MR. LANG: The appellant and her husband came to see me last week. I agreed to draw certain circumstances to the attention of the Court. It might be convenient if I did so before the appellant addresses the Court.

COURT: Very well.

MR. LANG: The appellant has a p.c. Was disqualified from driving. On 7th March, 1978 a Mr. Dabuae came to her and her husband's house in a car. In the car were two Gilbertese. Mr. Dabuae was very much ~~the~~ worse for drink and incapable of driving. Mr. Walton Doguape, the appellant's husband, had earlier that day called an ambulance to take him to hospital. He expected it to arrive at any minute. The two Gilbertese were in the Doguape house. Mr. Doguape was concerned, because he did not like the look of them. He did not want them left in his house with the appellant and their seven children while

he was in hospital. He thought that something unpleasant might happen. So he told the appellant to drive them to the Location, where they came from. They did not call the police, even though they have a telephone. Mr. Dabuue was outside in his car, very much under the influence of intoxicating liquor.

Mr. Doguape knew that the appellant had had her licence suspended and ought not to drive, also that she had a little to drink. But they considered that they had no alternative but to remove the two Gilbertese. Mr. Doguape was too ill to drive them himself.

APPELLANT: That was what I wanted the Court told.

MR. LANG: There are also family circumstances which the appellant wants to present to the Court. Her husband is a cleaner supervisor at the Civic Centre. He suffers from partial paralysis of the left side of his body. He can hold nothing properly with his left hand. He is lame in his left foot. He suffers from partial local strokes, according to himself.

He and the appellant have seven children, all of whom are living with them. Their ages are 8, 7, 6, 5, 4, 3 & 2. The appellant's mother and father are 60 and 78 years old, respectively. They are her only close family, I am told. They would be unable to look after the children.

Mr. Doguape has two brothers. He does not get on with one. The other has seven children of his own. The District Court imposed a prison sentence; they do not know how the children will be looked after. Mr. Doguape cannot dress himself. He is incapable of washing clothes and cannot dress the children. He cannot carry anything heavy, including the family shopping.

APPELLANT states that those are the facts she wished the Court to know.

APPELLANT also states that there is nothing more she wishes to say.

Mr. LANG: I do not need to say anything, except that the offence is serious.

JUDGMENT:

The offence is serious and in principle the sentence is not wrong or harsh. However, in view of the circumstances in which it occurred, which must have been very worrying to the appellant and may have caused her to act against her better judgment, I am satisfied that this is a proper case for imposing a fine rather than a sentence of imprisonment.

Accordingly, the sentence of imprisonment is set aside. I impose in its place a fine of \$75.

I.R. THOMPSON
Chief Justice

ORDER: The appellant may have until the 31st July, 1978 to pay the fine.

I.R. THOMPSON
Chief Justice

16/5/78