N25

PAPUA NEW GUINEA

IN THE NATIONAL)
)
COURT OF JUSTICE)

CORAM: PRENTICE, DEPUTY C.J.
Friday,
13th February, 1976.

PAUL AIKA & 11 ORS. v. CASPAR UREMANY
PAUL AIKA & 11 ORS. v. THOMAS MANUS

STATEMENTS OF FACTS RAISING POSSIBLE JUSTIFICATION CARRIAGE OF WEAPONS - NO DISCLOSURE TUMULT - PLEAS GUILTY RECORDED UNSAFELY - OFFENCES NOT DISCLOSED: MISTAKEN ACCUMULATION SENTENCES.

PAPUA NEW GUINEA

IN THE NATIONAL)
)
COURT OF JUSTICE)

CORAM: PRENTICE, DEPUTY C.J.
Friday,
13th February, 1976.

PAUL AIKA & 11 ORS. v. CASPAR UREMANY
PAUL AIKA & 11 ORS. v. THOMAS MANUS

Appeals 186 and 187 of 1975 (P)

1976
Feb. 10, 13.
Port Moresby

PRENTICE, DEPUTY C.J.

The twelve appellants were each convicted of (1) carrying offensive weapons; and (2) behaving in a riotous manner; as a result of the day's happenings at Bereina on 14th October, 1975. In each case, pleas of guilty were recorded against the twelve when they each acknowledged the correctness of a statement of facts read out. All were sentenced to four months' imprisonment with hard labour on each charge - the sentences being cumulative.

Appeals are now brought on the grounds that -

(a) pleas of guilty should not have been recorded;

(b) the evidence (statement of facts) was not such as to sustain the offence alleged; and

(c) the sentences were excessive.

By consent, the appeals were heard together.

The learned magistrate himself in his reasons for judgment confessed that total sentences of eight months to each appellant were excessive; and he explains that he confused himself between the meanings of the words "concurrent" and "cumulative" - he intended only four months' sentences in other words.

It is not easy to understand from the Local Court records just what happened at Bereina on the day

1976

Aika & Ors. v. Uremany

Aika & Ors. v. Manus

PRENTICE, DEPUTY C.J.

in question. It is clear that there was some fighting over a land dispute and that the Riot Squad was called from Port Moresby and subsequently arrests were made.

The Acting Public Prosecutor who appeared to oppose the appeals pointed out that there must have been a good deal of excitement and notoriety about the the happenings. He made a valiant attempt to piece out from the two statements of fact the picture as it might have presented itself to the magistrate and so to justify the Local Court's findings. It is true that the learned magistrate most probably had local knowledge as to the time sequence and geographical location of the happenings on that day - knowledge which cannot be elucidated by me from a perusal of the Court records. I find it impossible to say whether in the fight which occurred weapons were used by both sides. Some events took place at Inawabui village. The appellants come from Vanuamai village - their antagonists from Nakura. The record does not disclose the distances between these villages, nor does it enable one to decide the really crucial issue of a "carry offensive weapons" charge, whether the accused might have been defending themselves on their "own territory" against attack - whether they were justified in having the weapons on their persons. It does not explain whether (as Mr. Egan suggests might have been the position) the appellants were originally without weapons, went home to their village with the aid of a police escort, armed themselves and later sallied forth again, with illegal aggressive intent.

In my opinion the statement of facts in the "carry offensive weapons" charge does leave open the possible interpretation that the accused were acting reasonably (in self-defence) in carrying the weapons. I do not think it is safe to allow the pleas of guilty as recorded to stand on the mere possibility that the learned magistrate had in his own mind information not recorded in the statement of facts, which provided the missing pieces of the jig-saw puzzle and presented a complete picture of the offence charged having been duly committed. I consider evidence should have been

called and the issue of reasonableness of possession of the the weapons adjudicated upon.

Similarly, in regard to the "behave in a riotous manner" charge, I find the statement of facts an unsafe basis on which to erect convictions. No detail of the alleged fighting is given therein and it is noticeable that there is no allegation of noise, tumult, alarm or uproar, such as is usually required to constitute the riotous element in such a charge. As Kelly, J., pointed out in Leonard Eliza and Others v. Mandina (1); it is possible to have a fight or series of fights which may not constitute riotous behaviour.

I am of the opinion that it would be unsafe to allow the convictions to stand - that a substantial miscarriage of justice could thereby be involved. I propose to allow the appeals both on the ground of excess of sentence and on the grounds that pleas of guilty should not on the agreed statements of facts, have been accepted and that the statements did not support the convictions.

I think I should say that if the offences were made out I would not consider a sentence of four months' imprisonment for one or both of the offences excessive. I do not think cumulative sentences would be called for.

I allow the appeals, order that the matters be transmitted to the Local Court at Bereina for hearing before another magistrate.

I am somewhat exercised as to the question of bail. The accused served one month of the sentences imposed, were on bail for some twelve weeks and then re-arrested following the Supreme Court decision No. SC91. As a result of this my decision they are now in the position not of convicted persons seeking bail under s.45 Local Courts Act, but of persons presumed innocent until convicted - persons awaiting trial. I appreciate that an explosive situation existed in October in the Mekeo. But I have no doubt that among

---

(1) (1971-72) P. & N.G.L.R. 422

such a sensible and responsible people, much of the heat has gone from the dispute. I allow each accused bail pending trial on his own recognizance in the amount of K300.

Solicitor for the Appellants	:	N.H. Pratt, A/Public Solicitor.
Counsel for the Appellants	:	J. Montgomery.
Solicitor for the Respondents	:	L.W. Roberts-Smith,
Counsel for the Respondents	:	K.B. Egan.