

IN THE SUPREME COURT)
OF THE TERRITORY OF)
PAPUA AND NEW GUINEA)

497
CORAM : MINOGUE, J.
Thursday,
3rd October, 1968.

BETWEEN

LEMU MARIBUI

Appellant

AND

JAN KATERINE CROFT

Respondent

REASONS FOR JUDGMENT

1968

APPEAL

August 12,
October 3,
PT MORESBY
Minogue, J.

This is an appeal brought by the appellant against his conviction in the Local Court at Garaina on the 3rd May 1968 upon an information that on that day at the Primary T School at Garaina at 10.30 am he said to the respondent in front of the assembled school, "Who do you think you are? You had men patrolling my house to watch me, I know what you are up to, you said I had spirits in my house", and behaved in such a manner as to be insulting towards the respondent, his senior officer, and against his sentence upon such conviction to imprisonment of one month.

The grounds relied upon in support of the appeal were that the magistrate was wrong in law in that the information disclosed no offence and that the penalty was excessive. As in the case of a previous appeal brought by the appellant against a conviction for offensive behaviour on the same day it appeared that the real ground of appeal was that there was no evidence to support the conviction for insulting behaviour which is made an offence by section 30(d) of the Police Offences (New Guinea) Ordinance 1952-1965, and I heard argument based on this ground of appeal. However, at a later stage I allowed a fresh ground of appeal to be added, namely that the magistrate was wrong in law in hearing this case in that he was biased as he had advised the respondent to initiate proceedings in this matter.

At the hearing of the appeal I had before me the complaint which was made on the 3rd May in the terms that I have set out above and the record of the court proceedings including the evidence taken by the magistrate. The record shows that the appellant is a teacher employed by the Education Department at Garaina, that the charge was read over to him and he was asked if he understood the charge to which an affirmative answer was given, that he consented to his case being heard in the Local Court and

1968

Lemu Maribui

v.

Jan Katherine
Croft

Minoque, J.

that his plea of guilty was taken and recorded. The respondent then gave evidence on oath as to the facts which was as follows. At 10.30 am. after the school recess that morning, at the foot of the school steps she commented to the appellant on the good discipline of the children whereupon he moved from a post against which he had been leaning to the top of the steps, obstructed the way and proceeded to abuse her in front of the assembly. This she said was not the first such occurrence. According to her he said, "I know what you are up to. We all know what you are doing. You have people patrolling my house and you sent the boy over to my house to see if we had spirit." She went on to say that she told him this was not so and that neither of his allegations was true. She described his voice as being raised in pitch and tempo and alleged that it caused such alarm (presumably to her) that she sent for a police officer because she felt she could not control him. His performance was she says a disgraceful one in front of the school children and she further alleged that when there had been similar occurrences on other occasions he had expressed his sorrow but had subsequently repeated the performance. According to her there was no occasion for his outburst, the verbal attack was unprovoked for she had not spoken to him apart from the mention of discipline in the ranks. The appellant was then asked if he wished to answer the charge to which he replied, "Well, it looks as if I will have to say that I am sorry again". The magistrate then remarked that he was afraid the appellant had left that too late and asked him did he have anything more to say to which the appellant replied that he did not.

The appellant was then convicted and a previous conviction was noted, namely that of behaving in an offensive manner contrary to section 30(d) of the Police Offences Ordinance, this being a conviction which had been recorded immediately previous to the hearing of the instant charge and related to some allegedly offensive behaviour in the early hours of the same day. I have already ruled that the evidence led did not support the charge against the appellant and I reversed his conviction on this charge.

I heard a good deal of argument directed to showing that the behaviour alleged in this case did not fall within the category of insulting behaviour made punishable by section 30(d) of the Ordinance but for reasons which I now proceed to set out I do not, nor do I think I can on the material before me, pronounce upon this matter. The Local Court magistrate as he was required to do forwarded his reasons for judgment. These I think should be set out in full.

They are:-

184

" The Defendant, since his arrival at Garaina at the beginning of this year, has continually acted in an insolent and at times insulting manner towards his senior officer, the Complainant, Mrs. Jan Katherine Croft. He has been warned many times about his behaviour by Mrs. Croft, the District Education Inspector, the Station Manager, Mr. A. Hutton and myself. He has on some of these occasions apologised to the complainant, however his feelings have apparently had no effect on his actions and the behaviour continued.

I, myself advised the complainant that she should take some action should his behaviour continue and on the day of this occurrence she sent word to me that she wished to lay a complaint against him.

In the matter about which the complaint was laid, I have no doubt about his intention to be insulting. My opinion is derived not so much from his words as from his behaviour, that of standing over the complainant, a small woman of around fifty years of age and shouting at her in front of the assembled school of which she was head and from whom she must be able to expect respect.

In view of his actions and of his complete disregard for previous warnings together with the knowledge of a previous conviction under section 30(d) of the Police Offences Ordinance, I felt that strong punitive action was necessary. "

Perusal of these reasons makes it immediately apparent that the magistrate had a strong interest in assisting and advising the respondent and that he was far too closely identified with the situation of tension which appears to have developed between the appellant and the respondent. I wish to make it quite clear that I am not ascribing blame to either of the parties to this appeal. A situation has apparently developed which on the face of it would seem to require some administrative action and which should not have been allowed to reach the stage that it has in the small community at Garaina. But I cannot help but feel from the magistrate's own approach to this problem that no matter how well-intentioned and perhaps soundly based his advice to the respondent was he was biased in her favour. Although trite law this case shows that it needs repeating that justice must not only be done but be seen to be done, and it is unnecessary for me to set out authorities in support of the well-known proposition that if a judicial tribunal is biased or there is reasonable ground for thinking that it may be biased its decision cannot stand. Accordingly I reverse the decision of the Local Court Magistrate (using the word 'reverse' in the sense of 'revoke, abrogate or annul' - see Shorter Oxford English Dictionary).

185
.. /4

I should add also that it was quite wrong of the magistrate to record the conviction which he had imposed that morning as being a previous conviction.

Although Mr. O'Neill urged upon me that I should not only reverse the decision but also dismiss the complaint I cannot accede to his submission. Because of the way the case was initiated and conducted it is quite impossible for me to form a judgment whether the appellant's behaviour was insulting or not. In my opinion the proper course is to remit the matter for hearing by another magistrate when the witnesses can be more calmly assessed and the facts more impartially investigated, and I so order.

Solicitor for the Respondent : S.H. Johnson, Crown Solicitor.
Solicitor for the Appellant : W.A. Lalor, Public Solicitor.