536

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

CORAM : FROST, J.
THURSDAY,
14TH AUGUST, 1969.

IN THE MATTER of the District Courts Ordinance 1963-1965

AND IN THE MATTER of An Appeal against a conviction

BETWEEN: LAWRENCE SUMANI Appellant.

- and -

NUMUA BINIAOIARE Respondent.

1969.
Aug. 14
PT. MORESBY
Frost, J.

JUDGMENT.

This is an appeal brought by Lawrence Sumani, who was a Sub-Inspector of Police and the officer in charge of the police station at Samarai, against his conviction by the District Court at Samarai on the 1st May, 1969, whereby he was sentenced to three months' imprisonment for contravening the provisions of Section 8(a) of the Police Officers Ordinance in that he did unlawfully assault the informant, Numua Biniaoiare. The grounds of the appeal are first that the conviction was wrong at law in that on sentence the learned magistrate called for, considered and took into account documents which contained allegations in respect to matters irrelevant to the issues contained in the charge then before the court, further, that he erred in failing to put such matters irrelevant to issues contained in the charge to the appellant to establish whether or not the appellant admitted or denied such allegations, and further that the learned magistrate erred in not giving the appellant the opportunity to explain matters taken into consideration on sentence. Secondly that the sentence is excessive.

At the hearing, Mr. Craig, who is the General Secretary of the Police Association, appeared, and was given leave to appear for the defendant. In his reasons for decision, the learned stipendiary magistrate states that Mr. Craig informed the court that the appellant

admitted kicking the informant, but denied any other striking. It was on this basis that the plea was accepted. A brief statement of facts was then read out by the police prosecutor. In his Reasons for Judgment, the learned stipendiary magistrate also said: "I stressed at this point that the appellant was being sentenced in relation to the incident near the sub-district office which gave rise to the charge and that other allegations other than those stated, 1 and 2 above, were not being considered." Those considerations were that the defendant was the Officer-in-Charge of the police station at Samarai and that the striking took place when the informant was being unlawfully arrested after having escaped from unlawful detention.

The Statement of Facts discloses allegations that the appellant had assaulted the informant on a number of occasions on 6th March, 1969, and also on the day before, on the 5th day of March, 1969. Unless the information was amended so as to make clear the precise act of striking in respect of which he was being charged, or the learned stipendiary magistrate indicated the one single act of striking upon which he was proceeding to convict, then the information and proceedings would have been bad for duplicity. But the learned stipendiary magistrate was very well aware of this, as appears from the passages I have cited from his reasons for judgment. Accordingly, in my judgment, it must be accepted that the magistrate did take into account only the one relevant matter admitted, that is, the kicking, so that the ground of attack on the conviction must fail. If the appellant admitted that he assaulted the informant by kicking and the court said that is the only matter to be considered upon conviction and penalty, it seems to me that there is no miscarriage of justice and accordingly that the appellant's plea was properly taken and the conviction properly recorded. The appeal against conviction thus fails.

But that brings me to the second ground, that the sentence is excessive. I must say that I found it rather depressing that the learned stipendiary magistrate seems to have considered as the only form of punishment in this case a term of imprisonment. In the result, he

sentenced to imprisonment, for an act which he described as of a "comparatively mild nature", a young man who, starting no doubt from village life in this Territory, had passed Standard 9, and after admission to the police force and advancing to the rank of sub-inspector, had served in the police force for seven years without any prior conviction or any disciplinary charge against him. The learned stipendiary magistrate at no time appears to have considered that the case may have been appropriate for a fine or for a suspended sentence.

However, I defer this question as to the sentence being excessive, because Mr. Pratt first argued that the sentence cannot in any event stand because it was wrong in law. Mr. Pratt's argument was that the learned stipendiary magistrate said that he took into account that the kicking took place when the informant was being unlawfully arrested after having escaped from unlawful detention. This is the only interpretation I can give to the words used.

From the affidavit made by the appellant in this case, it appears that, although the defendant had four days before being convicted and fined and was given seven days to pay the fine, so that under the order of the court he ought not to have been taken into custody until the expiration of that period of seven days, the appellant had been told by the local magistrate to keep the man in the police station at night and let him out during the day, so that he could raise the money for his fine, and that whatever the appellant did was done under the instructions of the local magistrate. Thus, if there was an unlawful arrest, then there may have been extenuating circumstances, because the appellant was carrying out orders by which he thought he was bound. However, be that as it may, this was not an issue before the court. The only act which was admitted was the kicking. There was no admission as to unlawful arrest. There was no trial of this issue. It is quite plain that a court can take into account only the particular offence of which an accused is convicted. If there was an unlawful arrest, that was another matter, to be triable either by a further

charge or under civil proceedings. It was quite wrong for the court to take that into account in passing sentence. So, for this reason, the sentence cannot stand.

So I now have to decide the appropriate punishment. As the learned stipendiary magistrate said, the striking was of a comparatively mild nature. It seems to me that a sentence of three months imprisonment was out of all proportion for this minor assault. It was proper to take into account that the offence was committed by a police officer in the course of duty, but in all the circumstances, in my opinion, it was not a case for imprisonment. It was either a matter for a suspended sentence, or more appropriately a fine. The learned stipendiary magistrate also had the evidence of Father Cope of the Church of England that the appellant had offered him assistance as a member of the church, he tried to help, was always willing to help any person whenever he could, he attempted to take on more than he could do, so that promises that he made he was not always able to keep, and he was subject to certain frustrations in his position at Samarai which may have led to him becoming irritable and "letting off steam" when he took the defendant into custody. Before this court, I have had the benefit of an affidavit by Dr. Burton-Bradley, a specialist psychiatrist, who reviewed the appellant's career in the police force. He underwent basic police training in 1962, was appointed an instructor at the Police Training College after completion of his basic training and in 1964 was admitted as a Cadet Officer to the Police Officers' Training School. He graduated as a Sub-Inspector in 1968 and attended a one month's course at Manly Police Officers' Training College in New South Wales. He is a non-smoker and drinks very rarely. From his record, he had little in the way of practical police experience before becoming an officer and he was sent to Alotau soon after graduation where he had one month's work under supervision before being posted as Officer-in-Charge, Samarai. Dr. Burton-Bradley refers to the duties that he had to undertake and these diverse and new duties for a police sub-inspector in

charge were such that the appellant soon found that he could not keep up and he received repeated requests for reports on matters and gradually an extreme case of tension and frustration built up. Having regard to his make up, Dr. Burton-Bradley felt that he was unsuited for such responsibility so early in his professional career and this accounted wholly for his state of anxiety and the irritability displayed. In the doctor's opinion, any form of brutality as such was inconsistent with his general approach to life and people and save in circumstances where he suffered from anxiety neuroses, it is extremely unlikely that he would resort to physical violence in the future.

So that this case is to be seen in perspective as a case of a man who was under tension and under anxiety, and then faced with this irritating behaviour of the defendant gave vent to his irritability and frustration. It was, as I have said, a serious matter that a police officer should resort to such conduct. I am informed that he will have to face a disciplinary charge, and he will have this conviction as an adverse mark against him so early in his career. He was released on bail, but in the intervening period after his conviction, he was apparently undergoing some limited form of restraint. Taking this into account and the effect of the conviction on his career, I consider he has been sufficiently punished.

I therefore allow the appeal against sentence and order that the appellant be discharged. The appeal against conviction is dismissed. The conviction is affirmed and the appellant discharged.

Solicitors for the Appellant : Craig Kirke & Pratt.

Solicitor for the Respondent : P. J. Clay, Acting Crown Solicitor.