Laine, 9. 675

IN THE SUPREME COURT OF PAPUA NEW GUINEA

CORAM : FROST, SPJ.
Tuesday,
21st March, 1972

ANDRIAS NANGANTA
Appellant

- and -

LEWIS NANDI
Respondent

REASONS FOR JUDGMENT

1972
Mar.15,21,
RABAUL
Frost,SPJ.

This is an appeal against the conviction of the appellant by the Local Court at Kokopo on 1st October, 1971, of an offence under the Police Offences Ordinance, Section 31(b). The section provides:-

> "A person who -
>
> (a) ....
>
> (b) carries or has in his possession in a public place without lawful excuse (proof of which lies upon him) an offensive weapon of any kind,
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> is guilty of an offence".

The complaint, however, was defective in that it alleged merely that the appellant "was found in possession of an offensive weapon; namely a Katapel", which is the word used for a catapult, without reference to the other elements of the offence. From the Record of Proceedings the appellant pleaded guilty.

Counsel for the appellant relied on the statement of the law by Jordan, C.J. in Ex parte Lovell; Re Buckley & anor. (1) as follows:-

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(1) (1938) 38 S.R. (N.S.W.) 153

"If the Magistrate convicts upon an information or charge which discloses no offence, or for an offence with which the accused has not been duly charged, the conviction is bad". (Cited by the present Chief Justice in Collins v. Mycock(2). See also Ex parte Burrell, Wicks & anor. (3))

This statement of the law is clearly applicable, from which it follows that the conviction cannot stand as indeed counsel for the respondent very properly conceded. The appeal will, therefore, be allowed.

There are, however, two matters which were referred to in argument. The first is that a statement of facts was read to the appellant which included the allegations that the appellant was found in possession of the catapult in a public place and without lawful excuse. The Magistrate then noted the appellant's reply "Defendant says it is true. I carried the Katapel for no good reason". But there is nothing to indicate that the statement of facts was read out before the charge was put to the appellant, and the usual procedure of the Local Court is for the statement of facts to be read after the plea is taken. In any case the appellant was entitled to have a trial in which the proper procedure as laid down by Jordan, C.J. (supra), was observed.

The other matter is the effect of Section 27 of the Local Courts Ordinance, which provides that no objection shall be taken to a complaint etc. for an alleged defect therein, whether of substance or form, or for a variance between it and the evidence in support, and any such variance may be amended by order of the Local Court at the hearing. If this Section was applicable it could, in my opinion, enable the respondent to have the complaint amended but only for the purpose of a rehearing by the Local Court. However, in Tasmania, a similar section has been construed as not conferring a power of amendment of a complaint which does not disclose an offence and, therefore, confers no

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(2) (1964) P. & N.G.L.R. 1 at p.10
(3) (1968) 2 N.S.W.R. at p.119, per Isaacs, J.

jurisdiction on the court. (See Davies v. Andrew (4)). In my opinion Section 27 of the Local Courts Ordinance should be similarly construed.

A further ground of appeal was taken that a catapult was not an offensive weapon within the meaning of the Police Offences Ordinance, Section 31(b), but as the respondent conceded that the Local Court had, in the circumstances, no jurisdiction, this ground was not argued, and I make no decision on it one way or the other.

This case shows the fundamental importance of the Magistrate at the commencement of the proceedings checking that the complaint sets out all the elements of the offence as prescribed by the Ordinance.

It is most unfortunate that the appellant was two months in custody before being released on bail.

Appeal allowed, conviction and sentence quashed.

Solicitor for the appellant - W.A. Lalor, Public Solicitor

Solicitor for the respondent - P.J. Clay, Crown Solicitor

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(4) (1930) 25 Tas. L.R. 84