ASHLEY KOUKOU AND REX MAMIOHA-v-REGINA

HIGH COURT OF SOLOMON ISLANDS
(Mwanesalua, J.)

Criminal Appeal Case No. 167 and 168 of 2005

Hearing: *16th June 2006*
Judgment: *21st August 2006*

R. Iromea for the Respondent
S. Lawrence for the Appellant

JUDGMENT

Mwanesalua, J: The Appellants pleaded guilty to the offence of disturbing religious assembly, contrary to Section 132 of the Penal Code (Cap.26) (the Code). The Magistrate convicted them of that offence on their own guilty pleas and sentenced each of them to fifteen months imprisonment respectively. They appealed against sentence. They signed their appeal petition on 1 December 2005. They alleged that the custodial sentence imposed on them was too severe.

Mwaniwiriwiri village is situated in East Bwauro on Makira Island. There was a church building in the village. Its roof was made of corrugated iron. On the night of 19 November 2005, a huge congregation of SSEC members joined the Maniono singing band to worship. The band sang and marched as part of the religious assembly. The Appellants threw stones onto the roof of the church building and shouted to the congregation. The second Appellant used swearing words when he shouted. The singing and the matching stopped and the congregation dispersed due to the disturbances caused by the Appellants. The Police arrested the Appellants on 20 November 2005 and were kept in custody at the Kirakira Police Station overnight. On 21 November, they were charged and released on bail to appear before the Magistrate Court in Kirakira. They pleaded guilty to the charges laid against them when they were arraigned by the Magistrate on 28 November.

The offence of disturbing religious assembly is a misdemeanor. It is one of the misdemeanor offences in the code with no prescribed punishment. The general punishment for such misdemeanor offences is a sentence of imprisonment for not more than two years or with a fine or with both, under Section 41 of the Code.

The Appellants contended in their appeal against sentence, that the custodial sentence of fifteen months imposed on each of them by the

sentencing Magistrate was too severe. The Crown conceded that that sentence was indeed excessive. The Magistrate pointed to two reasons to justify the imposition of an immediate custodial sentence. First, he recognised the freedom of worship guaranteed to individuals under the Constitution. Second, he also recongised the duty of his court to protect the Community which he serves by imposing custodial sentence on the Appellants as a deterrent to like minded offenders.

The court record shows that whilst the Magistrate considered the facts relating to the nature and the circumstances of the offence which the Appellant had pleaded guilty to, there was no consideration of the facts relating to the Appellants themselves. The only fact mentioned in relation to the Appellants was in regard to their guilty pleas. It was clear that the first Appellant committed his offence due to his frustration with his Community leaders for allowing logging to be carried out in East Bwauro which had caused problems for the people within his community. On the other hand, the second Appellant only committed his offence, through the influence of the first Appellant. Whilst the Magistrate passed deterrent sentence on the Appellants, there was no evidence that the offence on which the Appellants were convicted was prevalent in the area where the Appellants lived.

The Appellants pleaded guilty. It is clear that insufficient credit had been given in relation to that guilty plea. The Appellants are of good character with no previous convictions. This appeal was heard nine months after the Appellants were sentenced. There is no explanation given to this court for the delay in proceeding with the appeal. This court is satisfied that the sentence imposed on the Appellants was manifestly excessive. Two months imprisonment should have been an appropriate sentence in this case. That would have been sufficient to demonstrate the public condemnation of the Appellants' conduct and provide enough warning to potential offenders in committing the same offence. This appeal is allowed.

Orders of the Court:

1. Appeal allowed

2. Quash order of the Magistrate Court dated 28 November 2005 imposing sentence of fifteen months imprisonment.

3. Substitute imprisonment sentence of two months.

4. Appellants to be released from prison at the rising of the court.

The Court