MARGARET ASHLEY-v-REGINA

HIGH COURT OF SOLOMON ISLANDS
(Mwanesalua, J.)

Criminal Case No. 412 of 2006

Hearing: *9 November 2006*
Judgment: *15 November 2006*

N. Mirou for the Respondent
A. Mani for the Applicant

JUDGMENT

Mwanesalua, J: The Appellant in this case is Margaret Ashley. She was charged with one count of grievous harm on 8 August 2005. She pleaded guilty and was convicted of the offence at the Magistrates Court in Honiara on 5 July 2006. She was sentenced to serve two years in imprison on 5 July 2006. She appealed to this court against sentence on 10 July 2006.

The grounds of appeal against sentence are that the Learned Magistrate erred in that he proceeded to deal with the case in the absence of the Appellant's advocate; that the sentence imposed against the Appellant was harsh as she was of previous good character, that she pleaded guilty and that she was six months pregnant when she was sentenced.

The Prosecution does not oppose this appeal. They agreed that the sentence imposed on the Appellant was harsh having regard to the mitigating facts advanced on behalf of the Appellant.

The offence of grievous harm on which the Appellant had entered a guilty plea carries a maximum sentence of fourteen years imprisonment. That sentence reflects that it is a very serious offence.

But a criminal offence involves an offender and a victim. Their respective circumstances needs to be taken into account by the Court before arriving at the appropriate level of sentence to be imposed on the offender as in this case.

The Appellant is of previous good character. There is no doubt that the effect of the conviction and sentence of this Appellant of untarnished character had a devasting effect on her because of lack of previous contact with the criminal justice system before this offence.

The Appellant pleaded guilty to the offence. She told the court below that she was sorry for committing the offence. It appears to this Court that her sorrow came from genuine remorse on her part. It is obvious that her guilty plea saved considerable time and expense of a trial. The step she took to enter the guilty plea served public interest in saving money for other police services.

This Court notes that the offence occurred in on 9 December 2000. It was well over five and half years after the offence was committed before she was prosecuted and sentenced for the offence. There were no reasons given for this delay. This delay caused anxiety and concern about the offence hanging over her head over a very significant length of time. There being no evidence that such delay was due to any fault of the Appellant. In such a delay, the Court may express its disapproval by imposing a more lenient sentence since it is the duty of the Crown to ensure that justice is not delayed.

There is provision in law to take female prisoners to hospital to deliver their children and to return to prison when the hospital authority decides that they are no longer required to remain in hospital.[1]

But there is no mention of any privileges in law for female prisoners who return to prison with their children after their birth at the hospital. It seems to this court such female prisoners would need more than standard food, clothing and bedding issued for use of single female prisoners.

I say this because female prisoners as other women outside the prison are the source of life. They are the root of human development. The silent force that propels the family. A baby and its mother would need care after returning to prison from hospital. There must be adequate post-natal care provide for them. The child among other things, must be provided with an environment where peace, freedom and motherly care can be given to it. These things must be clearly provided for in law as the privileges provided for unconvicted prisoners[2] who are remanded in custody pending trial.

The factual basis for the sentence imposed upon the Appellant in this case were not made available to this court for perusal. The call for them to be made available to consider the level of sentence imposed by the sentencing Court was not successful. Advocate for the Appellant in this appeal did not raise the ground of appeal on absence of advocate for the appellant in the court below. It seemed that that ground of appeal had been abandoned and is not being addressed by this Court.

Although the Appellant has been convicted of a serious offence. There are strong and compelling mitigating factors in this case which would reduce the sentence of two years imprisonment imposed on the Appellant. They were the plea of guilty; the

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[1] ***Section 48 of the Provisions Act (Cap.111)***
[2] ***Section 50 of the Prisons Act (Cap.111)***

length of delay between the Commission of the offence and disposal of the case in court on 5 July 2006; the previous good character of the Appellant and the absence of any provisions in the Law dealing with female prisoners and their new babies who were born when they serve their sentences in prison.

This Court will allow the appeal by the Appellant. The sentence of two years imprisonment imposed by the Magistrates Court against the Appellant on 5th July is reduced to four months and four days. That means that the Appellant will be released from Prison at the rising of this Court.

ORDERS OF THE COURT:

1. **Appeal allowed.**

2. **Quash sentence of two years imprisonment by order of the Magistrates Court on 5 July 2006.**

3. **Substitute imprisonment of four months and four days in place of that sentence of 5 July 2006.**

4. **Appellant to be released from prison at the rising of this Court.**

I order accordingly.

Francis Mwanesalua
Puisne Judge