

PUBLIC PROSECUTOR -v- STEPHEN TAU

JUDGEMENT

STEPHEN TAU was convicted before the Senior Magistrates' Court of unlawful entry contrary to Section 143 Cap 135 and intentional assault contrary to Section 107(b) Cap 135, and was sentenced to two months imprisonment for the assault, no separate penalty being imposed for the unlawful entry.

He now appeals against the sentence of two months imprisonment. His grounds of appeal are two fold. As set out in his Memorandum of Appeal they are:

1. The sentence of two months imprisonment imposed by the Senior Magistrate Court indicates that the Senior Magistrate Court considered the Acts of the Appellant to be serious, and as such the Honourable Senior Magistrate at trial, DAWN BARCINSKI SM, should have directed the appellant to be represented by a lawyer under the terms of the Constitution of Vanuatu Article No. 5 (2) (a).

AND/OR

2. That the sentence was excessive.

The appellant appeared before Senior Magistrate Barcinski without legal representation. Before the charges were put to him he was asked if he required legal representation, indeed 'advised legal advice'. The appellant thereafter declined to follow that advice.

His first ground of appeal is that, because the court regarded his offences as 'serious' (which can be seen from the sentence) it should have directed the appellant to have legal representation. As his advocate put it the court should have "directed compulsory legal advice". This proposition, it is said, is supported by Chapter 2 Part I Art 5(2)(a)., which says inter alia "everyone charged with an offence shall have a fair hearing, within a reasonable time, by an independent and impartial court and be afforded a lawyer if it is a serious offence;"

In my view that provision says nothing of that sort. To comply with that provision a court may feel it should remind an accused of his right to be represented if he chooses. If it considers further explanation necessary it may choose to explain that the services of the office of the Public Solicitor may be free of any charge to the individual.

Nothing in that provision, however, dictates that an accused must seek legal advice.

I am satisfied in the circumstances of this case that the accused, charged as he was with serious offences was made aware of his right to be represented if he wished to be, and that he declined to be represented.

There will be circumstances when a court may wish later in proceedings to further remind an accused of his rights to legal representation, and of its free provision. That may occur after a court had heard the facts of the case from the prosecution when some aggravating features of an offence have come to the court's attention, or when an accused appears not to understand the proceedings or denies part of the prosecution outline when he addresses the court.

None of those circumstances existed in this case and therefore this ground of appeal must fail.

Before leaving that ground, the effect of not having legal representation was said to be that the accused's mitigation was not put forward for consideration by the Senior Magistrate. As the accused now has the benefit of representation, his mitigation has been put forward, to this court, and this court may correct any error which may have accrued because the mitigation was not put before the lower court.

This leads to the second ground of appeal, that the sentence was excessive. The brief fact of the offences are these, that the accused entered a dwelling house, at night, and therein assaulted his former girlfriend. He hit her head five times, squeezed her neck three times, slapped her six times on the forehead and kicked her.

Before the court the appellant says that he was provoked into the assault having heard that his former girlfriend was associating with another man. In the lower court, alcohol and kava were also put forward as explanations for the assault.

Having considered both the accepted facts of the case and the matters put forward in mitigation both before the lower court and this court I can say that the sentence of 2 months imprisonment is by no means excessive. Were I to make any change to the sentence at all my inclination would be to increase it. However I do not intend to interfere with it as it is within reasonable bounds. The appeal is dismissed.

The appellant will serve the 2 months imprisonment imposed by the Senior Magistrates' Court on 26th March 1991, to commence forthwith.

Dated at Port Vila this 28th day of June, 1991.

*E P Goldsbrough*

E P GOLDSBROUGH  
Acting Chief Justice

