

PUBLIC PROSECUTOR

v

BALDAZARD PALAUD

SENTENCE

COUNT 1. - Intentional Assault

Imprisonment for 4 months

COUNT 2. - Damage to property,

Imprisonment for 14 days, to be served concurrently with the sentence on count 1.

Total effective sentence - 4 months imprisonment.

REASONS FOR SENTENCE

The accused has pleaded guilty to 2 charges, Intentional Assault, Section 107(c) Penal Code Act, CAP 135 and Damage to property, Section 133, Penal code act CAP 135. The offences arose out of the one incident, which occurred at a bar in Luganville on 18 September, 1994.

On that day, the accused, after drinking a bottle of whisky with a friend, went to a bar in Luganville, where he knew a dance was being held. At about 1:00 am, the defendant went to leave the bar. As he was going down some steps at the front entrance, he bumped into a man. This man complained about the behaviour of the accused and the accused proceeded to punch the man. No doubt the accused was affected by alcohol, as is often the case, in cases of assault. It does not seem that the accused and his victim were known to each other. The attack was without reason or excuse.

As a result of being struck several times to the face, the victims glasses were broken, he suffered cuts to the face and mouth which required suturing and he could not eat properly. The permanent harm alleged in this case is not said to be great. It is said to be constituted by residual scarring from the laceration to the face.

This attack is one of several which have occurred in public places in Luganville in recent times. That the offence of assault is currently prevalent, is a factor which I regard as significant, in sentencing the accused.

The accused is 25 years old, a subsistence farmer who has some cash crops and some bullocks. He attended school for 9 years and does not have prior convictions. I have often said in the past, that the Court should not be quick to sentence first offenders to imprisonment. The accused has pleaded guilty and has offered through his counsel to pay compensation. Counsel has asked that a fine be imposed instead of imprisonment. There are therefor, factors personal to the accused which suggest that he could avoid a sentence of imprisonment. What has led me to the contrary view in this case, is the fact that there may well be a trend towards increasing violence in the community at the moment.

The element of general deterrence is a factor which must be considered by the Courts in sentencing. I think that in a case of this nature, anything other than a term of imprisonment would not be regarded by the community as likely to deter others from committing a similar offence. True it is that the accused was affected by drink and people when so affected are not likely to think seriously of the consequences of their actions. I think however, if members of the community understand that if they allow themselves to become drunk and attack people, they will go to gaol, they may avoid getting into such a situation. One of the greatest features of this country, compared to many other places in the world, is the fact that people have for many years been able to walk about the streets without fear of being attacked. Actions such as the accused has engaged in here, are an attack upon the community and not just the actual victim of the offence. Therefor the accused and others who behave in this way must realise that the community through the Courts, will punish those who threaten the safety of the people of this country. Accordingly, I think that I must impose the sentence that I have. In fixing the term of imprisonment, I have given the accused credit for his plea of guilty and for the fact that he is a first offender. I think that without these features of the case the sentence may well have been of the order of 9 to 12 months.

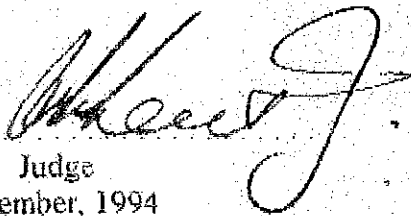
I have ordered that the sentence on count 2 be served concurrently with that on count 1. I understand the damage to the glasses and shirt of the victim to have occurred as an incident of the assault and not as a result of some separate action, designed to bring about the damage. Therefor I think that it is appropriate to order concurrency.

I am asked to award compensation to the victim. He has, in his statement to the police claimed 100,000Vt by way of general damages. I am not sure that claims made in this way are entirely satisfactory. I do not have any real way of assessing the damages and I have not seen or heard from the victim. In the absence of any objection or contrary argument on behalf of the accused, I am, however, prepared to award compensation to the victim.

I order that the accused pay to Shin Suke Kotani, the sum of 85,000Vt by way of compensation for his injuries and the sum of 15,000Vt as restitution for the damage to his glasses and shirt - total 100,000vt, recoverable as a civil debt.

In view of the fact that I have ordered the payments to the victim, I will not make an order for the payment of prosecution costs.

The accused has the right to appeal against the decision in this case. If you wish to do so, you must do so in writing within 14 days of this date.



Judge

2 November, 1994

