

Criminal Jurisdiction

Criminal Appeal No.8 of 1974

SAPAKUKA KAPAI (GE.1880)

APPELLANT

V

THE REPUBLIC

RESPONDENT

19th July, 1974 at 10.30 a.m.

In Court

Before Mr. Justice I.R. Thompson, Chief Justice

For the Appellant: Mr. R. Kun

For the Respondent: Mrs. L. Billeam

Appellant: Present

Appeal against conviction and sentence, both counts.

Mr. KUN: I seek leave to withdraw appeal against conviction on both counts and proceed only with appeal against sentence on Count 2. I wish to call evidence of character.

Mrs. BILLEAM: No objection.

COURT: Very well.

A.W.1 JAN PELETI, Christian, sworn, states:

(In English): I work for the N.P.C. as Asst. Hospital Administrator. I have been working for the N.P.C. and B.P.C. for over 13 years in Nauru. I am an Ellice Islander, one of the senior members of the Ellice Islands community in Nauru. I have known the appellant since he came to Nauru over three years ago. He is an Ellice Islander. He has never been in trouble with the police before as far as I know. The Ellice people are recruited by the N.P.C. because there is little work in the Ellice Islands. Such work is valuable to his whole island.

The appellant is young and has been very cooperative. He comes from my own island and has always been well-behaved since he came to Nauru. I did not know him at home because I was away at school.

Employment in Nauru is an important matter for an Ellice Islander because he can then support not only himself but also his own family and subscribe to the island council for the community.

I met the appellant's parents during my last leave. His father was ill at the time. The appellant is the oldest son and has three young sisters to support. If he loses his job here, it will be a serious matter as employment is hard to find in the G & E.I. Colony. I know that the appellant sends money to his parents every three months and contributes to our island council's levy.

No cross-examination.

EXAMINED BY            Each island has its own meeting every month in  
THE COURT:            Nauru. At these meetings the leaders issue  
warnings to their islanders. That is when we arrange for money  
to be sent home to their families. I was very surprised when  
he behaved as he did. He has never been involved in such a thing  
before. We have given him a warning and told him that, if he  
does not behave in future, we shall recommend to the N.P.C. to  
dismiss him and send him home.

GEORGE EDWARDS, Christian, sworn, states (in English):

I work for the N.P.C. as Stevedore in the  
Marine Department. I know the appellant. He works with me.  
He has worked for me for 2½ years. He has worked very conscient-  
iously and been very helpful. He has always been sober at work.  
I have always given him good reports. If he is put in prison,  
he will lose his job. That would be a pity as he is a good  
worker. He would have lost his job for good. I believe that,  
if a man is jailed for a week or more, he loses his job. The  
N.P.C. will allow the appellant to stay on in his job if his  
sentence of imprisonment is quashed. I was told that by the  
Asst. Labour Inspector, Mr. Brennan. I had asked for him to be  
kept on.

The appellant has been a conscientious worker,  
never given any cause for complaint. He had good reports from  
his superiors before he came to work for me.

No cross-examination.

Mr. KUN:            The sentence of imprisonment will have very  
serious consequences to the appellant, his family and his island.  
First offence. Never in trouble before. Offence relatively  
minor, in proportion to the consequences of the sentence of  
imprisonment.

Has served two weeks of sentence. Sentence  
harsh. I ask for fine to be substituted for imprisonment.  
Others dependent on him. Accepts he must pay for his offence  
but asks that it not be by imprisonment or consequential loss  
of job. His wages are \$40 per month plus about \$30 overtime.  
He does not have to use any money for his own support. He  
normally sends \$25 a month home plus about \$50 a year to the  
island council.

...3/.

Mrs. BILLEAM: Appellant came to Nauru 3½ years ago. Was informed of conditions of employment. Must maintain proper standards of conduct and to keep within the law. Know standard expected of him and consequences which would flow as result of such conduct.

Offence is not minor. Unprovoked assault on peaceful member of community. Conduct cannot be condoned.

Economic results of loss of job. Difficult in many countries, including Nauru, to find jobs.

Alleged harsh sentence. But sentence of imprisonment for common assault over past two years. Sentence not unduly harsh.

If leniency shown, there may be a weakening of control over younger members of community. Reasonable civilized conduct must be maintained at all times. Adjustment problems exist but do not mitigate offence of this type.

Mr. KUN: Leniency will not weaken control. Representation made on behalf of appellant by A.W.I, a leader of the community. If Court is seen to accord weight to what he says, the younger members of the community are more likely to respect him. Appellant has learnt his lesson.

JUDGMENT: The appellant is appealing against a sentence of two months' imprisonment imposed on him by the District Court. The assault was made without provocation late at night on a Chinese employee of the N.P.C. living in quarters adjacent to those occupied by the appellant, who is an Ellice Islander.

The sentence is said to be harsh, not because of the period of imprisonment to be served but because of the consequences which will flow from it, i.e. the loss of his job and his return to his home island where employment prospects are very poor.

In the circumstances of Nauru, where men of different races have been brought to live and work together, it is important that breaches of the peace particularly any involving members of other races - should be dealt with firmly. A policy has, therefore, been adopted of dismissing employees if they commit such offences which the Courts consider serious enough to warrant sentences of imprisonment. Thus not only are persons who have caused serious breaches of the peace removed but others are discouraged from committing such breaches.

It is unfortunate, I think that the N.P.C. has chosen to gauge the seriousness of an offence by the sentence imposed by the Courts. An offence may well be serious and warrant dismissal but for reasons peculiar to the offender, e.g. ill-health or family circumstances, a sentence of imprisonment

may be unduly harsh. However, in this case there are no special circumstances which warrant this Court dealing with the offender otherwise than simply on the basis that the offence is serious and that he is a first offender.

While there may be good reason in many cases not to send first offenders to prison, the circumstances in which the offender in this case has come to be living in Nauru and the very serious nature of the offence in its possible consequences on relations between different racial groups in the N.P.C. Location, both in their work and in their homes, makes it impossible for this Court to regard the sentence imposed by the District Court as either harsh or excessive.

I have given full consideration to all that Mr. Kun has said, very ably, on behalf of the appellant and the evidence of the witnesses as to his character. Nevertheless, the seriousness of the offence warranted the sentence passed and I can find no adequate reason for altering it.

The appeal is dismissed.

I.R. Thompson  
CHIEF JUSTICE

19th July, 1974