



IN THE SUPREME COURT
REPUBLIC OF NAURU

Criminal Appeal No. 120/2015

REZAYEE HUSSEIN (CLV 030), REZA LOFTI (DOT 041), SEYED DEHKURDI (LXN 042, FARAHİ REZA (CLV 054), FARXIYA İBRAHİM (PIN 020), BAHAREH ALAMORADI GHASHGHAEE (BLO 035), PEJMAN SHAJIRATI (BLO 036), AND HOGAT GHIABAGLOU (ORL 003)

V

REPUBLIC

CATCHWORDS:

Application for leave to file appeal under Section 4(1) of the Appeal Act 1972- all appellants entered guilty plea and a conviction imposed- appeal against conviction and not sentence -application for leave opposed by the Republic. Leave granted on the basis of lack of uniformity of sentence for similar offences.

Counsel for the Appellant:	Mr Filimone Lacanivalu
Counsel for the Respondents:	Mr Ravu Tagavakatini
Date of hearing:	14 December 2015
Date of ruling:	16 December 2015

RULING

1. The appellants pleaded to a charge of unlawful assembly contrary to Section 62 of the Criminal Code 1899. The particulars of the offence reads as follows:

Rezayee Hussein (CLV 030), Reza Lofti (DOT 041), Seyed Dehkurdi (LXN 042, Farahi Reza (CLV 054), Farxiya Ibrahim (PIN 020), Bahareh Alamoradi Ghashghae (BLO 035), Pejman Shajirati (BLO 036), and Hogat Ghiabaglou (ORL 003) on the 27th day of February 2015 at Nauru did take part in an unlawful assembly with the intent to carry out a common purpose namely to walk to the Government complex in Yaren to stage a protest thereby causing persons in the neighbourhood to fear on reasonable grounds that Rezayee Hussein (CLV 030), Reza Lofti (DOT 041), Seyed Dehkurdi (LXN 042, Farahi Reza (CLV 054), Farxiya Ibrahim (PIN 020), Bahareh

9. All the defendants entered their guilty plea in case number 27/2015 after the sentencing indication was given, so effectively all the defendants made an informed decision.
10. Both the Criminal Procedure Code and the Criminal Procedure Rules does not allow a magistrate in this jurisdiction to conduct the sentencing hearing. It appears that the learned trial magistrate Mr Bracken used the process of sentencing hearing / indication which is available in the Victorian courts.
11. Case number 27/2015 was an appeal before Crucci J. I do not know whether the issue of sentencing hearing/ indication was raised before her. It appears that it was not as that issue has not been addressed in her judgment.
12. In this case the learned magistrate did not hold a sentencing hearing and nor did she give any sentencing indication as she was not empowered to do so. When the appellants pleaded guilty they may well have been under the belief that they would receive a similar sentence as in case number 27/2015, or even lesser as the offence was not so serious.

PARITY OF SENTENCE

13. On the issue of parity of sentence imposed on co- offenders in the case of Tiddy (1969) S.A.S.R 575; Kite (1971) 2 S.A.S.R 94 it was stated :

"It is general principle that "where other things are equal persons concerned in the same crime should receive the same punishment, and that where other things are not equal and due discrimination should be made between them."

14. Although the above relates to the issue of parity sentence for co-accused in my view it equally applies to the persons convicted for the same offence at different times.
15. The gist of the appellants complain is that the learned trial magistrate failed to follow the principles of parity of sentences for similar offences. In my view the appellants have established that they have a reasonable prospect of success, so I therefore grant them leave under Section 4(1) of the Act to file the appeal against their convictions
16. I noticed that the learned trial magistrate made a suppression order that the names of the appellants are not to be published and she relied on the case of **AG V Secretary for Justice [2013] NRSC 10** in which an order was made that the identity

Alamoradi Ghashghaee (BLO 035), Pejman Shajirati (BLO 036), and Hogat Ghiabaglou (ORL 003) would tumultuously disturb the peace.

2. On 15 November 2015, all the appellants pleaded guilty to the above charge and were convicted and sentenced and placed on probation for a period of 2 years.
3. The appellants are now seeking leave to appeal against the conviction under Section 4(1) of the Appeals Act 1972 (the Act) which reads as follows:

“(1) Save with the leave of the Supreme Court an appeal may not be brought by a person who has pleaded guilty and has been convicted on that plea by the District Court, except as to the extent and legality of the sentence.”

4. All the appellants are appealing only against the conviction and not the sentence. Their complaint is that the conviction against them would affect their employment prospects and hinder their travel to other countries. Their basis of the appeal is that the recording of the conviction is against the sentencing trend of the District Court for similar matters.
5. The respondent opposes the application for leave and submits that the appellants have no prospects of success at all, as the cases that they are relied on as the case law was put before the learned trial magistrate and she considered them in imposing the conviction.
6. Case number 27/2015 relates to transferees who were charged of unlawful assembly and all pleaded guilty to the charge. All the transferees did not have a conviction entered against them except UNP503. He filed an application for leave to appeal against his conviction under Section 4 (1) and the Director of Public Prosecution (DPP) did not object to the filing of the appeal. His conviction was set aside by Crulci J on the basis that there was disparity in the sentence.
7. This case was not as serious when compared to case number 27/2015, in which there was a violent confrontation between the transferees, the security guard and the police. Rocks and stones were thrown at the police and the security guards and building and vehicles were set alight and the damaged caused was substantial. In this case there was no violence nor was any property damaged.
8. In case number 27/2015, a sentencing indication was given by the learned trial magistrate Mr. Bracken. A sentencing indication is given after a sentencing hearing takes place in which agreed facts are placed before the court and the defendants plead guilty after a sentencing indication is given by the magistrate.

of the applicant should be kept confidential pursuant to Section 48(1) of the Refugees Convention Act 2012. I understand that all the appellants have been granted their refugee status so therefore section 48(1) of the Refugee Convention Act 2012 does not apply. Section 48(1) reads as follows;

(1) The secretary and the Supreme Court must maintain confidentiality at all times at to:

(a) the identity of an asylum seeker whose application to recognise as a refugee is being considered under this Act

Dated this day of 16 December 2015



Mohammed Shafi Khan
Mohammed Shafi Khan
Judge