

IN THE SUPREME COURT OF THE  
TERRITORY OF PAPUA AND NEW GUINEA

GITUANA-KUKORNI

Appellant

- and -

TOHLAN

Respondent.

J U D G M E N T.

MANN C.J.  
PORT MORESBY.  
18/5/62.

In this appeal I am asked only to deal with one small question, and my decision does not affect any other case than that which is now before me.

It appears that the Magistrate before whom these cases were heard convicted the Appellant in Case No. 82 on a charge of riotous behaviour and sentenced him to six months' imprisonment. Later, in Case No. 479, the Magistrate convicted the same accused of the same offence and sentenced him to one month's imprisonment.

I am asked to reduce the amount of imprisonment imposed on the first occasion on the ground that the Magistrate has shown, by his imposition of a different penalty on a subsequent occasion, that the first sentence was excessive. The record of the Court proceedings does not show that any particular material was before the Magistrate to assist him in arriving at his sentence in either case. On the first occasion the cases were dealt with upon a plea of Not Guilty, which at some stage during the hearing

was amended in relation to some of the cases to a plea of Guilty. On the later occasion the whole hearing was conducted upon a footing of a plea of Guilty, and no evidence was given either as to the offence charged or on matters which might affect sentence.

I think there is no ground for criticising the Magistrate for dealing with the same case twice, since there is always a good deal of difficulty with the spelling of names of native people, and on the records it appears that the name was spelt slightly differently on each occasion and appeared in two places widely separated on quite large lists of names, so that it would have been very difficult to detect the error. Moreover, when called upon to plead on the second occasion, the Appellant appears not to have said that he had previously been dealt with for the same offence, and was convicted and sentenced upon his own plea of Guilty.

I do not think that the facts before me afford much assistance in understanding why a different sentence was imposed on the two occasions, but it may well be that on the second occasion the Magistrate was dealing with a batch of people upon a plea of Guilty upon a footing that without the assistance of a thorough investigation into the facts, it would be proper to impose ~~to~~ a standard sentence at a fairly low level so that the sentence would not impose any injustice upon any of the people who were before him. The same assumption, of course, would not apply on the first occasion where, as far as the record shows, there was no particular inquiry as to the position of each individual member upon whom the maximum sentence was imposed.

I think that on the facts of the case it might

well have been thought that some of the people before the Magistrate deserved the maximum sentence, but I do not think that it was appropriate to impose that maximum upon the whole of the people listed as Defendants without further inquiry, and I think that, although on the first occasion the Magistrate certainly had a good deal of evidence before him from which he could fairly assess the seriousness of the situation, some specific inquiry should have been made as to the part played by each Defendant and as to other matters related to each Defendant before the maximum sentence should have been imposed as a standardised punishment. I think that the course followed in the later hearing was preferable because it was calculated to avoid undue hardship to anybody.

I think that I should reduce the sentence of six months, but that I should not reduce it as low as one month because there are facts on the record which do enable some assessment to be made of the character of the situation with which the Court was dealing, and I think that on the information available to me, a just result may be achieved if I reduce the sentence to one of three months' imprisonment.

I will direct that the Order appealed from be varied to that extent, and that the sentence be reduced to one of three months' imprisonment.

C.J.