SC 401

IN THE SUPREME COURT)
)
OF THE TERRITORY OF) CORAM : FROST, J.
)
PAPUA AND NEW GUINEA)

KARI TAU
Appellant

and

J. P. PIKE
Respondent

J U D G M E N T

1968

February 15;

March 1.

PT MORESBY

Frost, J.

This is an appeal against the conviction of the appellant by the District Court of Daru on the 14th August, 1967 for behaving in an indecent manner towards one, JANIA ARVAI, contrary to Section 8(d) of the Police Offences Ordinance 1947-1966. The grounds of the appeal are that a plea of guilty should not have been entered, the conviction was against the evidence and the weight of evidence and the conviction was wrong in law.

At the hearing in the District Court, the information was read and explained to the accused, who pleaded guilty. According to the statement of facts, the conduct in respect of which the accused was charged was that he had sexual intercourse with Jania Arvai, a young girl of fifteen. It was not suggested that the girl did not consent. Following the plea the accused was found guilty and convicted. In an explanation to the Court he said that he went to the airstrip with the girl and spent the night with her and that during the night he had intercourse with her. He was sentenced to one months' imprisonment.

The information was laid under Section 8(d) of the Police Offences Ordinance 1947-1966 of Papua which provides:-

A person who

(a) .....

(b) .....

(c) .....

(d) behaves in an indecent, offensive, threatening or insulting manner towards any other person .....

is guilty of an offence.

The Section is in very wide terms. In the construction of a Statute it is permissible to have regard to the evil, which, as appears from its provisions, it was designed to remedy. It is plain that the legislature was concerned with the protection of persons from objectionable conduct of the nature defined. It is not an element of the offence that it should be committed in any public place, as is provided in typical Australian legislation, for example, Police Offences Act (Victoria) Section 27(a); the Police Offences Act 1901-1965 (New South Wales). In those jurisdictions the statutory provision is "concerned with the preservation of order and decorum in streets and other places and with the punishment of "Police Offences" committed therein." Anderson v. Kynaston (1). Thus the mere fact that the person against whom the conduct was directed was not offended or that person consented thereto may not be a defence under such legislation. (ibid.)

Under the Territory Ordinance, which is not so limited, in my opinion, an act of intercourse consented to by a woman is not indecent behaviour so far as the woman is concerned. It is unnecessary for me to consider whether in certain circumstances conduct of a sexual character freely indulged in by two consenting persons, could properly be found to be indecent behaviour towards other persons who may be within sight or hearing. The charge here is that the appellant behaved indecently towards the girl. As it appeared from the statement of facts that the conduct alleged against him could not, as I consider, constitute indecent behaviour towards the girl, the plea of guilty was a nullity, and the appellant wrongly convicted. Laeka Ivarabou v. Constable Nanau (2).

I accordingly allow the appeal and set aside the conviction.

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(1) (1924) V.L.R. 214, per Cussen A.C.J., at pp. 217-218.
(2) (Unreported)