IN THE SUPREME COURT)
OF PAPUA NEW GUINEA)

CORAM: PRENTICE, J.
Wednesday,
7th November, 1973.

APPEAL OF JOSEPH DIMI PANGI

No. 213/73 (N.G.)

1973
Nov 6 and 7
RABAUL
Prentice J.

Appeal is brought herein against a decision of the Local Court at Rabaul, whereby the appellant was convicted of behaving in an insulting manner towards Dokas Tokial during the Warawagira Festival in Rabaul, and sentenced to imprisonment with hard labour for two months. It is submitted that the sentence is manifestly excessive, the appellant being a man of hitherto good character in steady work; that his offence should have been met with a fine. The maximum penalty for the offence is six months' imprisonment or $100 fine.

In purported compliance with the Appeal (Local Courts) Rules 1967, the learned magistrate has forwarded to the Supreme Court "Reasons for Decision" in the following form: -

> "Dealing with the grounds for appeal, I imposed what I considered to be the right penalty."

This of course tells the appellate court nothing. Unless it were confronted with a magistrate who was mentally incapable or recreant to his duty; this Court would normally assume that the presiding magistrate in any case, would impose what he at the time considered a correct penalty - even if he were to state at a later time that he considered he had erred.

An appeal against Local Court decisions has been provided by the legislature under Sec. 43 of the Ordinance, to an aggrieved person. This gives him an entitlement to have the facts, and the law applicable to them, reconsidered by another tribunal. If the latter finds a substantial miscarriage of justice has occurred, then the appeal may be allowed. The appellant, and the Supreme Court, are entitled to the full and proper cooperation of the magistrate, so that the appeal may be considered properly. Adequate consideration cannot be given if the magistrate's reasons for decision are not available. It is recognised that in a busy court day a

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magistrate may not express his reasons fully, among the sometimes brief notes on his court paper (my judgment in the appeal of Paul Papalamnan (1), refers to the District Court procedure). When called upon, following lodgment of appeal, he is given the opportunity to assist the appeal court by stating any special circumstances such as matter of aggravation in the particular setting, frequency of the offence, comparable punishments imposed and the like.

The magistrate's duty is stated by the Appeal (Local Courts) Rules, Statutory Instrument No. 44 of 1967, as being, to forward "the reasons for that decision which were given at the time of making thereof, or if no such reasons were given a statement to that effect and a short statement to be supplied by the magistrate of the reasons upon which the decision was, in fact, based."

I have given consideration to the desirability of referring the matter back to the learned magistrate for a statement that would in reality express his reasons for decision and comply with the legislature's requirements of him. However, the matter has been hanging over the appellant's head since September, and he served five days' imprisonment before he was able to lodge appeal and enter into a recognizance to prosecute it. He has, I am informed, lost his job - a most serious matter in this community. I consider he is entitled to a decision by me now.

The facts proved indicate a most unpleasant incident - the staining of the female complainant's blouse by the spitting of betel nut by the appellant. The setting was the Warawagira crowd at Queen Elizabeth Park at night time. Insults to women have been known to trigger off grave riots and fatal assaults; they are not to be treated lightly, especially if given by educated people or those in positions of authority. However, I have no doubt this was a somewhat cosmopolitan crowd of people enjoying themselves in a somewhat boisterous holiday atmosphere. The occasion would not have called perhaps for refined manners and sensitivity. The female complainant herself seems to have to some extent, incited the appellant, who comes from a rather more male-dominated (Sepik) society than perhaps herself, a Tolai - by

(1) Unreported judgment No. 771 of 1st November 1973.

herself remarking that he and his friends were "big heads" (in itself an insulting remark under some circumstances).

I consider I should accept the magistrate's one-sentence comment as indicating that there were no special circumstances calling for deterrence. I find myself therefore driven to the conclusion that in imposing a two months gaol sentence on a man of good character for an offence of such a kind during bucolic holiday-making, the magistrate has misdirected himself - that his sentence is manifestly excessive. Hence it would amount to a "substantial miscarriage of justice" within the meaning of Sec. 43(3), Local Courts Ordinance.

I allow the appeal. I confirm the conviction. In substitution for the sentence of the learned magistrate and in the endeavour to both deter other people from offending similarly and to do justice to the appellant and correct his attitude to society; I order the appellant to be fined thirty dollars. I allow two weeks for payment of the fine; - in default thereof I order that the appellant shall serve three weeks' imprisonment with hard labour.

Solicitor for the Appellant : G.R. Keenan, Acting Public Solicitor