

IN THE HIGH COURT OF THE COOK ISLANDS  
HELD AT RAROTONGA  
(CRIMINAL DIVISION)

JP APPEAL 2/93

BETWEEN NOORQA SAMUEL of  
Oneroa, Mangaia,  
Planter

Appellant

AND COOK ISLANDS POLICE

Respondent

Mr Puna for Appellant

Mr McFadzien for Respondent

Date: 13 May 1993

JUDGMENT OF QUILLIAM J

The appellant was charged with assault on a female, namely his sister. He appeared before a Justice of the Peace and after a defended hearing he was convicted and discharged. He appeals now against his conviction. The charge involved a family dispute which as the Justice of the Peace said had a background both of religion and politics. Certainly, there was an incident between the appellant and his sister.

Two grounds of appeal have been advanced. The first was that the decision of the Justice of the Peace on the issue of assault was not sustained by the evidence. As to that I cannot escape the conclusion that it was he who saw and

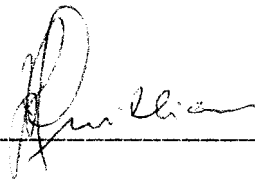
heard the witnesses and as I have not done so I would not substitute my view of the facts for his.

There was a second ground of the appeal which has more substance. This was that the conviction in the particular circumstance was out of proportion to the offence. I think it is clear on any basis that any assault was of a minor nature. Nevertheless it carried a maximum sentence of two years imprisonment. This has meant that the implications for the appellant were considerable. He is a Member of Parliament and in terms of the Electoral Act that conviction, if it stands will disqualify him from remaining a Member of Parliament and a by-election must be held. I must make it clear that he is not entitled to any special treatment from the Court because he is a Member of Parliament. And I record that no such special treatment has been asked for him.

Nevertheless in considering any criminal matter, the Court is bound to pay regard to any special implication which there may be for the defendant. If a person who was not a Member of Parliament committed an offence of this kind, then it could be adequately met by a fine and there would be no greater consequence than a matter of perhaps some stigma to the reputation. But the implications here are out of proportion to the minor offence which occurred. The Solicitor General has quite appropriately recognised that this is a factor which may have to be taken into account.

On appeal this Court has the same powers as the Justice of the Peace had. One of those powers is to enter a discharge without conviction. I am satisfied in this case that is a proper course but it is possible at the same time to impose an order as to costs which has the effect of indicating to

the public the disapproval of the Court of conduct such as this. Accordingly the appeal is allowed and the conviction is quashed. Instead the appellant will be discharged without conviction but subject to the payment of costs of \$200.00.



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