

SUPREME COURT OF NAURU  
CRIMINAL REVISION NO. 8 OF 1980

THE REPUBLIC v V. LAVALUA

D E C I S I O N

The accused was convicted in the District Court, on his own plea, of driving a motor vehicle, a motor cycle, while under the influence of intoxicating liquor; he was sentenced to pay a fine of \$125.

Although no one was injured by the accused's motor cycle, a motor cycle is a dangerous weapon when ridden dangerously either deliberately or due to inadequate control resulting from intoxication. He was so intoxicated that he was in danger of falling off the motor cycle; he was riding it along the main road through Aiwo, a heavily populated area. It was 2.00 a.m.; but there is no time or place on any of the main roads of Nauru where it is not potentially dangerous. Quite clearly a sentence of imprisonment was warranted, in view of the prevalence of such offences and the danger to the community. However, the accused is a Tuvaluan employed by the Nauru Phosphate Corporation and Mrs Billeam, on behalf of the accused, informed the learned magistrate that she had been advised by the General Manager of the Corporation that employees of the Corporation who are sent to prison for more than ten days are automatically dismissed from their jobs and repatriated to their countries of origin. Because of that the learned magistrate decided to impose a fine and not send the accused to prison.

The effect of the course taken by the learned magistrate, if followed in other cases involving employees of the Nauru Phosphate Corporation, would be that their sentences would be not only more lenient but different in kind from those imposed on other members of the public of Nauru for offences of driving motor vehicles while under the influence of intoxicating liquor. That would be inconsistent with the principle of even-handedness in sentencing which is fundamental to justice.

That is not to say that the "double-sentence" of imprisonment and dismissal from employment is itself fair. It is not. Employees of the Corporation should suffer the same penalties as other members of the public, neither more severe nor more lenient. It is, therefore, greatly to be hoped that, in the interests of justice, the Corporation will reconsider its policy in this matter and cease to

ten days. Certainly in some cases the mere conviction for certain offences, e.g. offences of dishonesty, assaults on fellow employees etc., warrants dismissal - and that is so, even if the Court imposes only a fine. But it is difficult to see what the Corporation gains by applying an inflexible rule instead of dealing with each case on its merits. If it dealt with each case on its merits, one would expect a short sentence for an offence such as driving under the influence of intoxicating liquor not to result in dismissal.

The correct sentence for the offence in this case is one month's imprisonment. The fine is set aside and a sentence of one month's imprisonment is imposed in its place.

The Director of Public Prosecutions is requested to send to the General Manager of the Mauru Phosphate Corporation a copy of this decision and to raise with him the possibility of the Corporation's policy being changed and, in particular, the accused being retained in employment if his services have otherwise been satisfactory.

CHIEF JUSTICE

14th November, 1980