Lalara v Watkinson [2001] NTSC 98

PARTIES:	LALARA, Abel
	v
	WATKINSON, James George
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NO:	JA 45 of 2001
DELIVERED:	8 November 2001
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JUDGMENT OF:	MARTIN CJ

CATCHWORDS:

APPEAL

Justices – appeal against sentence – unlawful assault – whether sentence manifestly excessive – Justices Act 1928.

R v Miyatatawuy (1996) 6 NTLR 44, considered.
Najpurki v Luker (1993) 117 FLR 148, considered.

REPRESENTATION:

Counsel:

Appellant:	R Woodroffe
Respondent:	M Carter

Solicitors:

Appellant:	NAALAS
Respondent:	DPP

Judgment category classification:	C
Judgment ID Number:	mar0133
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Mar0133

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Lalara v Watkinson [2001] NTSC 98
No. JA 45 of 2001 (20102423)

BETWEEN:

ABEL LALARA
Appellant

AND:

JAMES GEORGE WATKINSON
Respondent

CORAM: MARTIN CJ

REASONS FOR JUDGMENT

(Delivered 8 November 2001)

[1] Appeal against sentence. The appellant was convicted before the Court of Summary Jurisdiction sitting at Alyangula on 24 July 2001 for that on 14 February of that year, at Angurugu, he unlawfully assaulted Donna Wurramarrba involving circumstances of aggravation in that she suffered bodily harm, she was a female and he a male, and that she was threatened with an offensive weapon, namely an electric guitar, all contrary to s 188(2) of the Criminal Code 1983 (NT). The maximum sentence for that offence in those circumstances is five years imprisonment. He was sentenced to ten months imprisonment and it was directed that the sentence be suspended after he had served five months. The period during which he was not to commit any offence punishable by imprisonment was fixed at 18 months

from the date of his release from prison. The Court was obliged by s 78BA of the Sentencing Act 1995 (NT) that having found the appellant guilty of this offence, he having on one or more times before then been found guilty of a similar offence, to record a conviction and order him to serve a term of actual imprisonment for a term of imprisonment that is suspended by it partly but not wholly.

[2] The circumstances of the offence were that on the day in question the appellant was at his residence at Angurugu sitting on the veranda drinking beer with others. He had consumed about four cans of beer and then decided to go into Alyangula to obtain cigarettes and further alcohol. The victim, his wife, told him that if went into Alyangula he was not to return home if he was drunk, but to stay overnight and return the next morning. The appellant became angry at that, the victim walked into the house and the appellant followed. She began to collect her belongings, he obstructed her from leaving the house. He had an electric guitar in his hand and began to yell at her and then raised it above his head and brought it down striking her twice on the top of her head. The victim called for assistance and a family member restrained the appellant. She received two cuts to the top of her head, one requiring seven stitches and the other two. She was also bruised about her head.

[3] The following day the police interviewed the appellant. He admitted having hit his wife, saying, “Because she was swearing; I didn’t take it any longer”.

[4] It was put on the appellant's behalf that there were extenuating circumstances at the time of the offending. A brother had recently died of cancer, a few years before another brother had died and the appellant was worried about how he was going to look after his children and those of his brothers. There were a number of them. This was said to have led to his commencing to drink heavily, and it was in those circumstances that he attacked his wife.

[5] Although he cooperated with police when spoken to about the matter, when the proceedings first became before the Court it seemed that a contested hearing was to take place, it being thought that his wife would not give evidence. When it transpired that the prosecutor would proceed, the plea was entered at a later date. Nevertheless, his Worship took the view that in those circumstances he was entitled to receive a substantial discount on the sentence and reduced a notional sentence of 12 months by two months on that account and also took it into account in his decision to partly suspend the sentence of 10 months.

[6] His Worship was very conscious of the view taken by the courts in the Territory, and indeed elsewhere, in respect of the seriousness of assaults of this type. He also expressed himself aware of the prevalence of this type of offending in that particular community, and quite properly stressed the need for general deterrence.

[7] Given what appears later as to the appellant's age, background and character at the time of the offending, it is not shown that his drinking was primarily a product of the environment of the community in which he lived. An environment leading to neglect, deprivation and despair particularly in respect of younger aboriginal people leading as it often does to intoxication by alcohol intake or petrol sniffing may be seen as a mitigating factor. However, the appellant was not in that class. He became intoxicated on this occasion because of the family responsibility placed upon him by the passing of his brothers, but that does not excuse his violence towards his wife. He drank too much, wanted to drink more and became enraged when his wife tried to stop him, or failing that, in requiring that he stay away until he had sobered up. I do not view the fact that this event was committed whilst the appellant was affected by alcohol in itself as providing any mitigating circumstance. That it was aberrant behaviour is a matter which weighs in his favour. However, the deterrent purpose of punishment, especially for this type of crime, must take priority.

[8] Another ambiguous circumstance lay in the appellant's criminal record and his Worship's treatment of it. He had been convicted in 1975, 1978, 1979, 1980, 1982, 1985 and 1987 for offences of personal violence, that in 1987 particularised on the record as an assault causing bodily harm to his wife. He had been previously sentenced to terms of actual imprisonment on at least four occasions, for that in 1987, 18 months imprisonment, but wholly suspended. Scattered amongst those convictions are others clearly arising

from abuse of alcohol. There is no record from 1987 until 1991 and 1996 when he was dealt with for conveying or consuming liquor on a restricted area. It appears that at the then age of 43 he changed his ways.

[9] His Worship is said to have erred when he first turned to the subject by saying that the appellant's record clearly disentitled him to any leniency. However, it is apparent that his Worship resiled from that absolute because he almost immediately thereafter reminded himself that the last conviction for violence was in 1987, adding that such a gap may lead to a sentence being suspended wholly or partly. Given the whole of his Worship's remarks and the sentence imposed, I consider that his original statement was probably as a result of misapprehending the offences for which convictions were recorded in 1991 and 1996. Recognising that the last conviction for violence was in 1987 caused his Worship to modify his views. As noted above, he did suspend one half of the sentence imposed, one of the expressed reasons being the gap in convictions. It must be said again that the gravity of the immediate offence and the need for deterrence may overcome any benefit to be derived from good character as assessed by reference to prior criminal history.

[10] The prosecution presented to the court a document as a victim impact statement which, by definition, is to contain details of the harm suffered by a victim. This document was not such a statement, but there was no objection from the appellant. It said nothing about the harm suffered by the victim, but was an emotional plea on behalf of the appellant, inter alia,

going to the reasons for his fighting her, his reformed behaviour and remorse, her forgiveness of him and her desire that he not go to gaol. The victim's wishes relating to the disposition of an offender can not usually be relevant, "… the criminal law is related to public wrong, not issues which can be settled privately" (*R v Miyatatawuy* (1996) 6 NTLR 44 at p 49). In paying regard to the statement his Worship said that it was a very difficult matter and that no general rule could apply in the circumstances:

> "I think each case depends on its own circumstances and it seems to me that one has to take into account the gravity of the offence, the injuries and pain suffered or endured by a victim. And I think that the more serious the offence is then …. less weight will be given to the wishes of the victim. And I think that is consistent with the general principle that victims, being really too close to the event, are not really in the best position to assess what is the proper penalty. I think that goes for victims who clamor for very severe sentences. I think it cuts both ways. In this particular matter I think that the matter is so serious that despite the victim's wishes you must undergo a period of imprisonment".

His Worship was not wrong to have approached the matter in that way.

[11] I do not accept the documents signed by the victim as evidence of public opinion. It is in the nature of a character reference in relation to the appellant's involvement with his family, church and his employment. Similarly, the documents under the hand of the council clerk of the Angurugu Community Council and the unsigned document purported to be from the St Andrew's Church Fellowship are in the nature of character references. All that material could be taken into account favourably to the appellant and his Worship expressly did so.

[12] It is also complained that his Worship erred in failing to pay sufficient regard to the appellant's prospects of rehabilitation. It was put that his age of 48 years, that he had made a significant contribution to this community and not reoffended for violent offences for some 14 years, were all indicative that his prospects of rehabilitation were extremely favourable. Reference was also made in this regard to his involvement with the church and remorse to which I think could be added his cooperation with the police initially and his plea of guilty. The submission was that the favourable prospects of rehabilitation were such as to mitigate the need for specific deterrence. It is not suggested his Worship overlooked those matters, but that he gave insufficient weight to them.

[13] The matters upon which the appellant relies show a significant change for the good in his behaviour after his convictions in 1996, his abstinence from alcohol (apart from this event) over the previous three years, his involvement with the church and his position as a leader of the aboriginal community. He was also Chairman of the Amagula Association, an organisation responsible for organising meetings helping aboriginal people from Angurugu, Umbakumba and Birkerton Island by way of disbursement of monies to attend as students at Batchelor College and for other charitable purposes. It was said that it was a responsible position and there was no argument about it. Reference might also be made in this context to the circumstances giving rise to the offence. His Worship specifically referred to the appellant's prospects of future progress and subjective factors

including his prospects of rehabilitation and bore them in mind when fixing the date upon which the sentence was to be suspended.

[14] The respondent's submissions are reflected in the reasons above. He particularly relied upon what I said in *Najpurki v Luker* (1993) 117 FLR 148 at p 153:

> "Assaults with weapons which have the capacity to maim, mutilate, disfigure or disable another are of a most serious kind. Such an assault is aggravated if the person perpetrating it goes out of his or her way to become armed with the weapon, and it is worse if the person upon whom the assault is perpetrated is defenceless for whatever reason".

[15] That simply reflected the view often expressed in the Territory courts over the years. It is not suggested in this case that the appellant went out of his way to become armed with the guitar, but it is obviously an implement capable of inflicting significant injury, the victim had not provoked the attack upon her which came on the sudden and when she had no opportunity to escape.

[16] The appellant was entitled to receive every consideration for mitigating circumstances, but the principle of general deterrence weighs very heavily in matters of this type and I consider the sentence as constructed by the learned Magistrate was such as to meet the purpose of punishing the offender, providing conditions whereby his rehabilitation will be assisted to discourage him and others from committing the same or similar offence and to make it clear to the community, acting through the court, that it does not

approve of the sort of conduct in which the offender was involved. It also achieved the aim of protecting the Territory community from the offender.

[17] I have carefully considered whether the appellant has made out his ground of appeal that the sentence was manifestly excessive. Although it is a little higher than I would have imposed, it does not strike me as overstepping the proper limit for a sentence in all the circumstances of this case and the circumstances of the offender.

[18] The appeal is dismissed.
