

IN THE DISTRICT COURT OF NAURU  
Criminal Jurisdiction  
Criminal Case No. 1185 of 1976

THE REPUBLIC

vs.

KEN FRITZ & DAMIEN RAMAEO GAUNIBWE

CHARGE:

1. Stealing: C/S 398 of the Criminal Code Act of Queensland (as adopted) 1899 - The First Schedule.

JUDGMENT:

The case for the prosecution is that the two accused entered the Nauru Phosphate Corporation office and stole \$40 in cash and three security door viewers.

The prosecution has led the evidence of Anthony Bowditch, building supervisor of the N.P.C., who stated in his evidence that he found three security door viewers missing and the head of the department also reported to him that about \$40 was missing. Entry had been made by removing some louvres.

The investigating officer, Const. Nelson Tamakin, has stated that he visited the scene later and interviewed the two accused. He recorded the statements in Nauruan after the usual warning and caution. The accused signed the statements. The statements of the two accused are produced as Exs. "X" and "Y" and their translations as Exs. "X-1" and "Y-1".

The case for the defence is that the statements of the accused, Exs. "X" and "Y", were taken under duress. Both accused have given evidence and accused Ken Fritz has stated that Const. Tamakin hit him on the ear. Accused Damien Fritz did not state in his evidence that he was assaulted, His evidence is that he made the statement because if he did not say anything he would have been assaulted.

I am unable to accept the evidence of Ken Fritz that he told his mother that he was assaulted by the police. The mother is not a witness and according to his evidence it is unnatural for her not to have taken any action on the allegation if in fact it was made to her. No complaint

was made to a superior officer about the assault. Neither did the accused Damien Fritz make any complaint to a superior officer in the police force or to his parents.

If the statements were taken under duress as the accused alleged and they were innocent of the charge they are facing, it is most natural that their first reaction would be to complain to their parents; the parents in turn to take action by complaining to the head of the Police Force or to some other officer in authority that their sons had been falsely implicated. There is no evidence of any such action having been taken. What is before the Court, therefore, is only the allegation by these two accused that Exs. "X" and "Y" were taken under duress. I am unable to accept their evidence and I reject it as unworthy of credit.

I accept the evidence of Const. Tamakin that after the usual warning and caution he recorded the statements of the two accused in Nauruan and that the accused signed the statements.

I, therefore, hold that the prosecution has proved its case beyond all reasonable doubt and I find the accused guilty and I convict them.

12th November, 1976.

R. L. DE SILVA  
Resident Magistrate