

IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 141 of 1977

THE REPUBLIC

v.

KENNAN DOWEDIA

CHARGES:

1. Offensive Behaviour: C/S 5(d) of the Police Offences Ordinance, 1967.
2. Being Upon a Dwelling House Without Lawful Excuse: C/S 424A(a) of the Criminal Code Act, of Queensland - The First Schedule.
3. Offensive Behaviour.
4. Being Upon a Dwelling House Without Lawful Excuse.
5. Offensive Behaviour.
6. Being Upon a Dwelling House Without Lawful Excuse.

JUDGMENT:

The case for the prosecution is that the accused on the 12th day of April, 1977 committed two offenses, namely offensive behaviour and being upon a dwelling house without lawful excuse, on three different occasions.

I have examined the evidence in respect of each incident. The accused is alleged to have gone to the house of Mary Smith on the day in question at about 6.00 p.m. According to her evidence she heard a knock when she was in the lounge and she went to the front door and saw someone standing on the steps. That person whom she has recognised as the accused asked her for big John and she replied that there was no John living there. He repeated the question again and she replied that he must be living in the Government Settlement. The accused said that he found a paper belonging to John Smith and pulled out a paper and showed it to her. She found it to be phonographic photography. At that stage she asked the accused to leave but he walked inside and followed her. She turned and went out past the accused and called out to her dog and waited for the accused to leave.

He then came out and stood on the path. She then quickly locked the door. The accused did not offer any evidence nor did he make a statement or have anything to say regarding all three incidents. Therefore, on the evidence of Miss Smith which I accept, I find the accused's behaviour to be offensive and that he was in the house without lawful excuse and find him guilty on Counts 1 and 2 and convict him.

The next incident was when the accused, on the same day, went to the house of Mrs. Sandra Coles. According to her she heard a knock at the window at about 6.15 p.m. and found a man who asked her for a glass of water. She then gave him a glass of water and he then pushed a book through the louvres and said that he found it outside. The person whom she has recognised as the accused stood there drinking the water and then he asked her to have a look. She saw that it was phonographic material. She told the accused that it was not hers and asked him to leave and put it in the rubbish bin. The accused went over to the rubbish bin, returned the glass and then asked her for some books to which she replied that she did not have any. She asked the accused to leave and he left.

The evidence of Mrs. Coles which I accept clearly shows that when the accused was asked to leave he obeyed and her evidence does not, in my opinion, disclose any form of offensive behaviour on the part of the accused. His request for water is a perfectly legitimate one and the accused does not appear to have persisted in showing her the phonographic material and thus make a nuisance of himself. I, therefore, find the accused not guilty of offensive behaviour and being in a dwelling house without lawful excuse and acquit him on Counts 3 and 4.

The next visit of the accused was to Miss Jannet Bulling, who has stated that she is not certain that it was the accused who came to her house. The reason she has given is because his hair looked different at the time she gave evidence. The three incidents appear to have occurred within about half an hour. Therefore, as the earlier witnesses, Miss Smith and Mrs. Coles, have positively identified the accused as the person who called on them and the modus operandi appears to have been the same. I have no doubt that it was the accused who visited Miss Bulling. According to her the accused spoke to her when she was in the kitchen and requested her to order a booklet which he held out to her. She saw it

was phonographic photographs with some Danish writing on top. She then told the accused it has to be ordered in Denmark and not in Australia. He then said he had \$200 and whether she could order it for him. At that stage he wanted to buy some beer from her and when she said that she did not drink beer he asked whether he could kiss her. At that stage the telephone rang and she went to answer it after locking the door between the kitchen and the rest of the house. When she came back the accused was outside near the window and again repeated the request and asked her whether he could kiss her. She asked him not to be silly and went inside the house. She went out of the house through the front door about half an hour later and did not see the accused again. On this evidence I am satisfied that the behaviour of the accused was offensive and that he was in the house without lawful excuse and I find him guilty on Counts 5 and 6 and convict him.

17th June, 1977

R. L. DE SILVA
Resident Magistrate