

IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 143 of 1978

THE REPUBLIC

v.

MADAM LEUNG HOI CHUI

CHARGE:

Selling liquor without authority: C/S 31(1)
of the Liquor Ordinance, 1967.

O R D E R :

In a case of this nature, the most important evidence would be the marked money given to the decoy and the production of the goods alleged to have been sold by the accused.

I shall first deal with the evidence as regards the identity of the goods . The two Police Officers, namely Francis Dekuro and Andrew Heinrich, have given conflicting evidence. Const. Francis, who examined the goods, has stated that it was half a carton of Courage beer, but Const. Andrew has stated that it was a plain card-board box open at the top almost full with Courage and V.B. cans of beer. At that stage, witness pointed out to an open box, amongst several cartons of Beer of different brands which the prosecution had brought to Court. This box contained about two dozen cans of beer. Later on in his evidence, he was stated that there were only small cans of V.B. beers in the box and has admitted in answer to a question by Court that other loose cans of beer may have been put into the box at the police station.

The resulting position, therefore, is that, not only are the two police officers at variance regarding the goods sold; the cans of beer that the accused is alleged to have

sold is not before this Court. The box identified by Const. Andrew has not been produced as an exhibit.

The prosecution evidence is that a number of cases of beer of different brands were taken from the house of the accused. None of these cases of beer have been produced as exhibits. It is not an offence to have unlimited cases of beer in one's possession.

The prosecution has tendered in evidence two five-Dollar notes as Ex. "P-1". Here too, the evidence of Const. Andrew does not tally with the marks he said he made on the two notes. The two notes are marked in identical fashion, with a dot on the left top side of the note and on the reverse, on the figure five at the bottom right hand side. In evidence he has stated that in one he made the dot on the figure five and in the other on both figures. This evidence is in conflict with the two notes produced in evidence.

Further, there are a number of contradictions in the evidence of the two police officers. Although these contradictions taken individually may seem insignificant, their cumulative effect taints the prosecution evidence. Witness Francis' story up to the point of the alleged sale is different to that of witness Andrew. His evidence is that he and Andrew hid behind Block 36 which was 10 yards from Room 1. The other two officers were in a police car. When he saw the accused give a box, it was Andrew who rushed to the spot and he remained where he was. Const. Andrew's version is that as the accused gave the box to George, he and Const. Francis ran across and grabbed the box.

On a consideration of the evidence placed before this Court, a serious doubt arises in my mind as to what really occurred on the day in question. Even if the evidence of the decoy was led, it would not have cured the material contradictions in the evidence of the two police officers.

I am, therefore, of the opinion that the prosecution has failed to establish a prima facie case against the accused and I find the accused not guilty and discharge her.

R. L. DE SILVA
Resident Magistrate

9th March, 1978.