

IN THE SUPREME COURT)
OF THE TERRITORY OF)
PAPUA AND NEW GUINEA)

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BIGNOLD J.
28th July 1954.
Tapini.

THE QUEEN v. B. SENCKE.

JUDGMENT

In this case the accused Basengke is charged that between the months of January and June 1954 in the Territory of Papua he stole 15/8^d worth of sixpenny-halfpenny postage stamps being 29 in all the property of the Administration of the Territory of Papua and New Guinea, from a public office, to wit Gailala Sub-District Office, where they were then kept. The accused has pleaded "Not Guilty".

The evidence discloses that at the Sub-District Office there is a Postmistress who has charge of the stamps, and that upon accounting for the stamps, it is not possible to be sure whether a deficiency is a deficiency in money or in stamps, or both. These stamps are kept, some in the safe and some in a locked stationery box, and at all times after business hours, the Postmistress has them securely locked and is the only person with keys giving access to them.

On the 9th June the Officer-in-Charge of the Police was making a routine search of police gear when he found a sheet of 29 sixpenny-halfpenny stamps in the possession of the accused. They were folded in a small book amongst his gear. The accused was asked by this Officer - "Do you write many letters and send to your friends? If so, where do you buy the stamps?" The accused replied - "I got the stamps from the rubbish tin, that is, the one in the Sub-District Office which contains wastepaper for burning. They must have been thrown there by Sinabada, as they were mixed in with wastepaper." The Officer then said - "What stamps - I have made no mention of stamps. I only asked you if you wrote many letters and therefore needed plenty of stamps. Where are the stamps you mention?" The accused replied - "In my book". He was then asked - "When you found the stamps, what did you do with them?" He replied - "I found them in the basket in the Office and was going to tell Sinabada but she had already gone. I found them before going to Urun and took them to my barracks." The Officer-in-Charge of Police has given evidence, in fact, that he left for Urun on the 22nd February and returned to Tapini on the 9th April, where he has been ever since.

The next day, in relation to another matter, the accused admitted that he had the keys to the safe, having got them from another native. Mrs. Zigas says that she was short £3/3/2, but whether they were made up partly or wholly in sixpenny-halfpenny stamps, she could not say, because no accounting is made of individual denominations. She also said that she had sold the accused sixpenny-halfpenny stamps, but only singly, and that the Government Office at Tapini is the only place at which stamps may be bought in the Gailala District.

In the lower Court the accused made a statement. He said - "I did not get the stamps from the box. I got them in a drum in the Office. The drum is for rubbish. I tipped the drum up outside so as to burn the rubbish. Mrs. Zigas had left the Office, but one Patrol Officer was in the Office, so I took the stamps and took them to my barracks and put them in a book. I was going to bring them back at one o'clock but I forgot about it. The next day I went to Urun. I didn't think about it any more. All this other talk I have not hidden; in all this other trouble I have talked true and now I talk true - I did not steal the stamps from the box. I found them in the rubbish."

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As the Crown, by a plea of "Not Guilty", is put to strict proof of every element of the offence beyond a reasonable doubt, it is necessary to examine the evidence to see whether this standard of proof has been attained. It seems clear to me that, on the evidence placed before this Court, a jury might reasonably come to the conclusion that the 29 stamps placed in evidence are the property of the Administration of the Territory of Papua and New Guinea.

Now, it is not possible, on the evidence, in my view, to be sure that the account as to his possession by the accused is not true. If his story is to be believed, then those stamps may not have been taken by him from the Office wittingly, but they may have come into his possession knowingly, only at the time when he went to burn the contents of the drum. He therefore, in my opinion, could not be found guilty of stealing from a public office, and it remains to consider whether he should be found guilty of stealing by finding.

As to this, he says that the Postmistress and the Patrol Officer had left at the close of business when he found the stamps, and he took them back to the barracks, intending to bring them back in the afternoon, but forgot them, and on the very next day he was transferred to Urun. He says that he forgot about them altogether then, except of course, as the evidence shows, until he was questioned about stamps.

I think that a jury would, in view of the fact which has been established that he did go on transfer to Urun, be disposed to give him the benefit of the doubt, and I therefore find him "Not Guilty".

J.