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

BASIL MOREHARE TAPORA
Appellant

and

COLIN RAYMOND HOLT
Respondent

JUDGMENT

This is an appeal from a Court of Petty Sessions held at Port Moresby when, on the 21st February 1961 the defendant(appellant) was convicted on a charge of being in a room of a dwelling house without lawful excuse contrary to Section(2)(j) of the Vagrancy Ordinance. The defendant (appellant) was sentenced to imprisonment for one month.

The grounds of appeal are:

"(1) That the conviction was against the evidence and weight of evidence.

(2) That the Magistrate erred in law in not finding that the circumstances constituted a lawful excuse for being on the premises.

(3) The Magistrate erred in law in not finding that I did discharge the onus of proof upon me to show that I was upon the premises with lawful excuse.

(4) That the penalty sentence imposed is manifestly excessive. "

The Magistrate gave written reasons for judgment in which he found that the defendant had not discharged the onus of showing that he had a lawful excuse for being on the premises.

The Magistrate said in his judgment: "I do not believe the defendant." To say that baldly without giving some reasons for disbelieving the defendant would be insufficient to convict the defendant. The Magistrate, however, proceeded to give reasons for his disbelief. The question is whether or not it was material upon which he could reasonably found his disbelief.

The Magistrate said this:

" I do not believe the defendant. His story of a party, his taxi journey to Kila, for which he paid, the driver's refusal to drive him to Boroko and the journey to Koki for which he paid and his subsequent conduct on recollecting the existence of his friend, Kila Wari, when considered with the evidence of the witnesses for the prosecution, falls very far short of establishing the probability that his was a bona fide inquiry. The defendant has failed to discharge the onus placed on him and must be convicted."

The Magistrate accepted the evidence of the prosecution witnesses. It is the province of the Magistrate to decide all questions of fact. He is to decide on questions of credibility, the weight to be given to the evidence of the witnesses and the inferences to be drawn from the evidence he accepts as truthworthy. I gather these words from the judgment of Macrossan S.P.J. in Sheahan v. Woulfe (1927) St.R.Qd.at p.131.

I accept therefore, that the facts of the incidents at the house were as related by the witnesses for the prosecution.

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The Defendant had been to a party given for him prior to his leaving next day. After this party he went with a friend to Kila Kila in a taxi. After this he wished to return to Boroko but the taxi declined to take defendant to Boroko but he took him to Koki. The defendant paid for these journeys. This was just before twelve midnight. He says he recollected a friend, Kila Wari, who had been his friend at the Fiji Medical School two years before. He did not recollect his friend at the party, and made no enquiries at the party as to where his friend was. He says he went to Koki for the purpose of getting a taxi to Boroko. He says that while waiting for a taxi he remembered his friend whom he last heard of about twelve months before as living at Port Moresby. He went to a house nearby at Koki. The door of a lighted room in which a girl was in bed was slightly ajar. He pushed the door open and went up to the girl's bed. He would not leave when told to go by the girl. He did not go until a man appeared in answer to the girl's calling out, and only then, after being asked by the man twice to leave, he had to be escorted out by this man. He only mentioned that he was looking for his friend, Kila Wari, after he had been taken outside. He was apparently, at 11.45pm, anxious to return to Boroko. He did not wait to get a taxi but decided at this late hour to seek his friend, whom he had not seen for two years and whom he had last heard of twelve months before as living at Port Moresby. He says he saw through the door two girls in bed so he pushed the door open and went in.

I am unable to find that the Magistrate was unreasonable in disbelieving the defendant and rejecting his excuse. On the ground of excessive sentence, I see no reason to disturb the Magistrate's determination. The maximum for the offence is twelve months. The sentence of one month is by no means excessive.

I dismiss the appeal.

J.

11am 21/4/61