

REGINA
V.
WANG TIAN FA
TUNA ENTERPRISES LIMITED

High Court of Solomon Islands
(Palmer J)
Criminal Case No. 27 of 1995
Hearing: 5th October 1995
Sentence: 5th October 1995

USP LIBRARY
- 19 OCT 1995
PACIFIC COLLECTION

DPP for Prosecution
Andrew Radclyffe for Defendant

PALMER J: The accused Wang Tian Fa, was one of those Captains who should have been dealt with under CRC 11 and 12 of 1995 earlier this year. Unfortunately, he was not available at that time and the reason given was that he was out at sea.

The submissions of Mr Radclyffe therefore concerning similarity in treatment is to a certain extent relevant. However, there is a distinctive difference in respect of this accused. This is not his first time to appear before this Court. He had appeared in this Court on a charge under the same section 7, though different subsection for failing to store his fishing gear in the prescribed manner. This accused therefore is someone who is already aware of the stringent requirements imposed by the laws of this country and therefore despite the fact that he had a licence or a permit to fish in these waters, he should already have got the message sent across at his first appearance that it is vital that he complies with the requirements of the Fishery Laws and Regulations of this country. Once warned, he should be fully alert as to the requirements. The breaches were over a period of time and therefore inexcusable. Ignorance is no defence and language difficulties too are non-excuses. In fact these should have given rise to the opposite-extra alertness and vigilance.

I bear in mind that he has been grounded for the past two months awaiting the determination of this case. Taking into account his guilty pleas, the fines imposed in the other cases - CRC 11 and 12 of 1995, his previous conviction, he is convicted of Counts 1, 2 & 3 and fined \$10,000.00 on each count (Total \$30,000.00).

As regarding Count 4, it is not clear to me whether an election has been made or whether Counsel for the "A" would be prepared to accept the election made in CRC 11 & 12 of 1995 or wait for another one.

I have already made up my mind as to the amount of the fine if the maximum of treble the value of the goods is accepted. If Defence Counsel prefer to wait for an election then case will have to be adjourned to tomorrow afternoon for sentence on this count.

Andrew Radclyffe: My address was based on the ground that an election had been made and so would agree to sentence to be considered on that basis, that maximum is treble the value of the goods.

Court: Count 4: Fine \$3,000.00

Total Fine \$33,000.00.

Pay in 7 days in default 6 months in prison.

TUNA ENTERPRISES COMPANY LIMITED

As can be seen from the agreed facts, it is this company which obtained the necessary permission under the laws of this country to engage in fishing activities within the waters of Solomon Islands, so it is not entirely correct to say that their culpability should be less than that of the captains of the vessels already dealt with. If anything, it is the opposite.

As the signatory to the Fishing Agreement with the Government it is incumbent on the company to impress very clearly on its captains the importance of complying with the Fishing Regulations. It should have familiarised itself fully with the requirements at the inception of the Agreement and in turn get the captains fully conversant and familiar with these requirements. It should also have familiarised itself with the consequences of non-compliance.

If the company had indeed done its part in informing the captains, but that the captains had deliberately ignored or defied those advices, then that is a matter between them to sort out.

Culpability cannot be thrown around. It must start and end somewhere.

The offences I note were committed over a period of 5 months (from January to May of 1995). That would have been more than sufficient time for this company to monitor the activities of these captains and to be able to pick up the blatant breaches committed and to have them corrected immediately. There were a number of transhipments done already in breach of the requirements of the Fisheries Laws, of which in my view it would be most unlikely that the company would be unaware of. If it pleads ignorance of even these activities then I think there is something drastically wrong and some serious questions should be asked by those in authority concerning the operations of this company.

I do not accept the submission therefore that the company's culpability should be any less. They must accept full responsibility for the activities of those captains and must ensure that in future those captain's activities are closely monitored by themselves to ensure that the sovereign laws of this nation are not blatantly breached and ignored.

I give due credit for a guilty plea and that the company has no previous convictions.

I also take note of Mr. Radclyffe's submissions in respect of Count 8 as to the main reason why no shore base had been constructed. One would have thought that these matters would have been addressed right at the beginning before the Agreements were ever signed. Nevertheless, that would be no justification for arranging transhipment in blatant breach of the requirements of the Act. If that was a valid reason, then it should give all the more reason to make suitable, acceptable, alternative arrangements for such transhipments.

Company is convicted on all counts (1-8).

Counts 1-7	:	FF\$20,000.00 each
Count 8	:	FF\$10,000.00
Total Fine	:	\$150,000.00

Pay In 7 Days.

ALBERT R. PALMER

A. R. PALMER
JUDGE