

IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 237 of 1976

CHARGE:

1. Being in a dwelling house without lawful excuse. C/S. 424A(a) of the Criminal Code Act 1899 of Queensland - The First Schedule.

JUDGMENT:

The evidence against the accused is purely circumstantial.

The complainant James Slatter did not identify the person who entered his house in the early hours of the morning of the 12th of September, 1975. In his evidence he has stated that the person was wearing black shorts and a floral patterned shirt with dark blues and greens. He has also stated that the accused was getting away on a heavy type of motorcycle but could not recognize the make and the tank was either blue or green.

The prosecution has led the evidence of Norio Teboua, the owner of a 900 c.c. Kwasaki motorcycle which has a blue tank with yellow stripes. His evidence is that on the night in question the accused asked him for his motorcycle and is not certain as to when it was returned as he was sleeping. A witness for the prosecution, Rommel Audoa, was with the accused on the night in question at the Star Twinkles for a birthday party. According to this witness the accused was wearing a pair of football shorts the color of which he is not sure and a floral patterned shirt. After the party was over at about 10.00 or 11.00 P.M. they went to another place for drinks and he dropped the accused at about 12.00 P.M.

The police officer who investigated the report, Const. Andre Notte, did in fact trace the owner of the motorcycle which had a blue tank with yellow stripes. When he was returning to the Police Station after going to the complainant's house a few minutes after the incident, he saw the accused by the side of the road opposite his house wearing a nylon shirt and a pair of football shorts.

Circumstantial evidence must be of such a nature that it should lead to the irresistible conclusion that it was the accused and no other that committed the offense. In this case there is no evidence before the Court that there is only one motorcycle on the Island which has a blue tank with yellow stripes. In the absence of such evidence the Court can safely take into account the fact that there could be many more motorcycles with a blue tank and yellow stripes. As for the clothing of the accused, there are plenty of floral printed shirts being worn and black football shorts.

Although there is a strong suspicion that it could be the accused who entered the house of James Slatter, this by itself is insufficient to prove the charge. The prosecution must prove its case beyond all reasonable doubt and in the circumstances of this case I have no hesitation whatsoever in giving the benefit of the doubt to the accused. I find the accused not guilty and I acquit him.

1st June, 1976.

R. L. DE SILVA  
Resident Magistrate