

IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 892 of 1976

THE REPUBLIC

vs.

BEN DEIRERAGEA, MORRIS DEMINGAUWE,
FELIX DERANG BILLY IKA AND
MEIYOUWA MAGIN TSIODE

CHARGE:

1. Attempts to commit an offence. Contrary to sections 535 and 536 of the Criminal Code Act 1899 of Queensland - The First Schedule.

JUDGMENT:

The case for the prosecution is that the four accused on the 2nd of August, 1976 attempted to steal petrol.

It is in evidence that the accused were detected by the Police carrying a container and a hose at about 2.00 a.m. in the morning. Police Constable Heinrich stated in his evidence that they were on special patrol duty to apprehend petrol thieves and when they had stationed themselves near the Taiwanese Block in the N.P.C. Location, he heard the sound of two motorcycles and saw some people getting down. He identified the four accused. The accused left the motorcycles near the warehouse and walked towards the Location. He followed them with the other police officers and when they were between Blocks 48 and 49, he saw the accused coming towards them. Constables Rudy Francis and Felix approached them and got hold of the fourth accused. He saw the third accused with a hose (Ex. B) and the second accused with a container (Ex. A). The second accused, without being questioned, said "We did not get anything." The first accused ran away but was later apprehended and all four accused were taken to the police station. When he first saw the accused they had the container and the hose with them.

The evidence of this police officer is corroborated on all material particulars by Police Constable Rudy. According to him, he took the container from the second accused and the hose from the third accused. When he took the container from the second accused he asked him, "Why do

you have to steal petrol?" and the second accused replied that they ran short of petrol.

The four accused had made statements to the Police which were recorded by Sgt. Tannang after being duly warned and cautioned. The statements were taken down in the language in which they spoke, namely Nauruan. The prosecution has tendered translations of each statement. I have examined the statements, namely Exs. C, D, E and F, and their translations, Exs. C¹, D¹, E¹ and F¹. All statements point to one fact and one fact alone, namely that the accused, at the time they were intercepted by the Police, were on their way to the Location to steal petrol.

Mr. Degoregore, in the course of his submissions, stated that he did not cross-examine Sgt. Tannang on the statements because the due warning and caution had been given and that the Police threatened the second accused by asking him as to why he had to steal petrol. The question, "Why do you have to steal petrol?" is not a threat which would invalidate the statement of the second accused; but a mere query by the police officer. Even if I were to hold that the question by this police officer was a threat, it would only invalidate the statement of the second accused and not the statement of the first, third and fourth accused.

Mr. Degoregore also submitted that the act done was remotely connected with the commission of the offence and that it was only a mere preparation for the commission of an attempt. I have examined this submission very carefully and I find that I am unable to agree with him.

The evidence led by the prosecution reveals that the four accused came on two motorcycles, parked them near the warehouse and was seen walking towards the Chinese Location; the second accused was carrying a container and the third accused, a hose, when they were intercepted by the Police. Now, the question is, does this evidence amount to an attempt? In my opinion, it does. The acts of the accused cannot by any stretch of imagination be called a preparation for the commission of an offence. Preparation would be as in a case of this nature when the accused got ready a container and a hose in his home. But the moment the accused parked their motorcycles near the Chinese Location and walked towards the Location carrying with them a container and a hose with the intention of stealing petrol from any

parked car in that area, there was an overt act on the part of the accused towards the commission of the offence of stealing petrol. One cannot attribute to the four accused carrying a hose and a container an innocent intention other than a sinister one.

All the facts in this case reveal that the accused manifested the intention of stealing petrol by an overt act. Therefore, I am of the opinion that the actus reus necessary to constitute an attempt had been completed by the accused when they got down from their motorcycles and walked towards the Chinese Location to steal petrol. This act cannot reasonably be regarded as having any other purpose than the commission of that specific crime.

Therefore, for these reasons, I hold that the prosecution has proved its case beyond all reasonable doubt and I find all four accused guilty and convict them.

23rd September, 1976.

R. L. DE SILVA
Resident Magistrate