IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction
Criminal Case No. 163 of 1977

RIMONE TOM

v

ROY DEGOREGORE

CHARGE:

1. Unlawfully Published Defamatory Matter: C/S 380 of the Criminal Code Act, 1899 of Queensland - The First Schedule.

2. Illegal Practice: C/S 105 of the Criminal Code Act, of Queensland - The First Schedule.

ORDER:

At the close of the prosecution case Mr. Lloyd, counsel for the defence, submitted that there was no case to answer. He referred to sections 375, 377 and 378 of the Queensland Criminal Code and evaluated the evidence placed before this Court by the prosecution. Mr. Ramrakha, learned counsel for the prosecution, submitted that the Court has to satisfy itself at this stage of the case whether the prosecution had made out a prima facie case against the defendant.

It is common ground that there was a political meeting on the 31st March, 1977 for the purpose of the forthcoming by-election and along with the three candidates, namely the defendant, Bucky Ika and the complainant Rimone Tom, there were approximately a hundred people present.

I have examined the prosecution evidence very carefully to ascertain what really transpired at that meeting. There is no doubt in my mind that there was a sort of verbal duel between the candidates.

I will first deal with the evidence of the complainant Rimone Tom. At the very outset I must stress that I was not at all impressed by the demeanour of this witness - the star witness for the prosecution. He was ever ready to give evasive answers and it was by a dint of persistent cross-examination that there emerged the truth of this entire incident. Apart from the many instances when the witness deliberately uttered untruths like the matter of whether he knew the English equivalent of the Nauruan word "atariay"; the defence finally extracted from him the all-important fact that it was he and

no other that hurled the first accusation against the defendant; and that once it was done the defendant retaliated by saying that questions can now be asked as to what happened to the Air Nauru money. To make matters worse the complainant has quite categorically stated that he made this false allegation that the defendant misappropriated funds belonging to the N.L.G.C. in order to effect the defendant's chances at the Election. It was for this accusation that the defendant retaliated by referring to the loss of Air Nauru money and that the complainant, who had custody of the key, gave it to his friends.

The law is very clear on this point. Learned counsel for the defendant has referred to section 377 of the Queensland Criminal Code and subsections 4, 5, 6, 7 and 8 and submitted that subsection 7 would be more appropriately applied in the circumstances of this case.

Section 377 starts as follows:

> "It is lawful excuse for the publication of defamatory matter...."

and subsection 7 is worded as follows:

> "If the publication is made in good faith in order to answer or refute some other defamatory matter published by the person defamed concerning the person making the publication or some other person".

The retaliation by the defendant to the accusation by the complainant that he mishandled and misappropriated N.L.G.C. funds was an accusation of the same degree hurled against him and comes clearly within the ambit of this subsection and he is, therefore, entitled to the benefit of this subsection.

The credibility of the complainant is also suspect. At first he denied the English equivalent of the Nauruan word "atariay" but, on being pressed in cross-examiantion he made a desperate attempt to correct what he stated earlier by saying he got mixed up and that he sometimes forgets. I am unable to accept this explanation as it was contained in his affidavit tendered as Ex. "X". Before I finish with this witness I must stress that he made the false allegation about the defendant when there was nothing, not even the semblance of a suspicion, in any of the documents tendered in evidence, written by people who had obtained Phosphate Royalties that the defendant had in any way misappropriated or mishandled N.L.G.C. funds.

As the prosecution case proceeded and as witness after witness trooped into the witness box, it was quite evident that though a desperate attempt was made to resurrect an already

crumbling prosecution, that, with the entry of each witness one found the sorry spectacle of a prosecution being totally demolished by its own witnesses. Some of the witnesses did not even stand by what the complainant had stated earlier in evidence. Witness Ikaniya stated that it was the defendant who started the accusation first and Rimone Tom replied. But this is in direct conflict with the complainant's evidence on this point. Witness Beiyon Ika refers to the defendant's reply to the complainant but made no mention of anything else in examination-in-chief. It was only in cross-examination that he said he heard the allegation against the defendant.

The crucial question, therefore, is whether this Court can act on the evidence of witnesses who have exposed themselves to be witnesses whose credibility is in doubt and whose demeanour in the witness box did not impress me in any way.

Therefore, having scrutinished the entirety of the prosecution evidence placed before this Court very carefully and having taken into consideration the demeanour of the prosecution witnesses I have come to the irresistible conclusion that the evidence is of such a tenuous nature that it would be extremely unsafe to act on such evidence and that the prosecution has failed to make out a prima facie case against the defendant and accordingly, I hold that there is no case to answer.

For these reasons I find the accused not guilty and acquit him on both Counts.

R. L. DE SILVA
Resident Magistrate

21st July, 1977