

IN THE DISTRICT COURT OF NAURU
Criminal Jurisdiction
Criminal Case No. 130 of 1978

THE REPUBLIC

v.

CHAN LAM

CHARGE: Keeping a Common Betting House: C/S 233 of the
Queensland Criminal Code Act 1899 (adopted) -
The First Schedule.

JUDGMENT:

The case for the prosecution is that the accused was keeping a common betting house in Block 7, Room 3.

Two police officers, Const. Aloysius Iwugia and Const. Karl Hubert, went to the room of the accused. The evidence given by Const. Iwugia is not on all fours with that of Const. Hubert. According to Const. Iwugia he noticed a gathering of people outside of Room 3 in Block 7. On this point Const. Hubert has stated that he saw only four people seated round a table. Const. Iwugia noticed that the people were playing a game called dominoes and he viewed it for about 15 minutes from a distance of about 30 feet. Then he moved closer to about 10 or 15 feet and viewed the game for about 10 or 15 minutes. He noticed the people exchanging money across the table after each game and he saw the accused going into the room and giving money to some across the table. On this point, Const. Hubert's evidence is that he did not see any exchange of money across the table. He only saw some chips. Const. Iwugia stated that there were five people round the table while Const. Hubert's evidence is that there were four people.

According to Const. Iwugia most of these people dispersed as he approached the table. He went into the room and he found the accused paying out money to others after each game. He noticed money on a table where there were two Chinese seated. The pay-out was done from that table. There were two drawers opened and the accused put some money into the drawers and the remaining money he put into his shirt pocket. He took both drawers with the money to the police station. According to him when he approached the table Const. Hubert was about 30 yards away walking towards him. On this point Const. Hubert's evidence is that both he and Const. Iwugia walked together to the spot and that Const. Iwugia was just a few steps ahead. Further, Const. Hubert noticed only four people round the table and they at first watched the Chinese for about half an hour. He noticed the accused paying out money to others and he saw the accused sweep some money to a drawer.

The accused has given evidence and according to him he was talking with two of his friends on the day in question when the two police officers walked in and said they were gambling. He has denied this. He has also explained that the coloured chips tendered as exhibits are used by the Chinese for keeping the score of Chinese games.

A witness, Chan Woon Ching, has also stated in his evidence that he went to the room of the accused at about 11.45 a.m. and when he was there the police arrived and took the drawers from the table. It is also in evidence that it is a Chinese custom to carry large sums of money. The mere fact that the accused had a large sum of money in his pocket does not by itself constitute an offence.

Apart from this, the exhibits that the prosecution has produced in Court, namely the chips and the white blocks, cannot be described as instruments of gambling. The explanation given by the accused that these chips are used for keeping the score in Chinese games has not been disproved

by the prosecution. Therefore, I see no reason not to accept the evidence of the accused on this point.

As regards the infirmities in the prosecution evidence it is inconceivable that two police officers who raided an alleged gambling den should be at variance on very material particulars; for example, as regards the exchange of money. If one saw the exchange of money the other should have seen it, too; if one officer saw a group of about 9 people, there is no reason why the other should not have seen them also. These two police officers do not agree on the sequence of events up to the point of time that they entered the room of the accused. I am not suggesting that anyone of these police officers has given false evidence but if the calibre of these officers is such that they are unable to give evidence that corroborate each other on material particulars, there is no alternative left for the Court but to disbelieve them. It may well be that Const. Iwugia, who is a good witness, has spoken to the facts as they occurred on the day in question. But it would be unsafe to act on the evidence of one police officer when that evidence is not corroborated by the other police officer accompanying him. Though some of the discrepancies in the evidence are negligible the cumulative effect of these discrepancies on the entirety of the evidence of these two officers raises a serious doubt in my mind as to what really happened on the day in question.

The conflict in the evidence as to whether money was exchanged or not is not of vital importance in the sense that the accused is facing a charge of keeping a common betting house. This could have been overcome if the prosecution produced in Court instruments of betting; articles that are normally used in gaming houses. But none have been produced. Therefore, although a strong suspicion exists in my mind that something did occur in the early hours of the 14th November in the room of the accused it is not sufficient to prove the prosecution case beyond all reasonable doubt. The Court cannot

act on suspicion. I would, therefore, give the benefit of the doubt to the accused and find him not guilty and acquit him.

R. L. DE SILVA
Resident Magistrate

2nd June, 1978