

Republic of Nauru

Vs.

1. Melvin Roland
2. Myron Roland
3. Andrew Bailey

Mr. Henry Kausimae /DPP,
prosecutor
Mr. Whitlam Togamae
Defendant for
Melvin Roland and Myron Roland
and Pres Nimes for
Andrew Bailey.

Criminal Case 10/09

JUDGMENT

Melvin Roland, Myron Roland and Andrew Bailey are jointly charged with Arson and Sabotage.

Particulars of Arson:

"That on the seventh day of March 2008 at Nauru, **MELVIN ROLAND**, **MYRON ROLAND** and **ANDREW BAILEY** willfully and unlawfully set fire to a building namely the Nauru Central Police Station, the property of the Republic of Nauru."

Particulars of Sabotage:

That on the seventh day of March 2008 at Nauru **MELVIN ROLAND**, **MYRON ROLAND**, and **ANDREW BAILEY** did damage a public facility namely, the Nauru Central Police Station by committing a property offence of Arson with intention to cause major disruption to the use of services to the public."

The prosecution relied on the evidence of Dave Agar, an accomplice who was not charged. Agar gave a detailed statement to the police which was tendered at trial (exhibit P1). His oral evidence while not so detailed followed what he had said in his statement.

In outline Agar's evidence was that on the evening in question the four of them, of whom it seems Melvin Roland was the leader, formed the intention of burning down the Central Police Station. A visit was made to Myron Roland who was in the prison. Agar said in his statement [exhibit P1 @ p1]:-

"Melvin call me and told me in a calm behavior if I could get him to see Myron at the prison after hours because I used to visit Myron at the prison after hours, I replied 'yes'".

In a vehicle driven by Andrew Bailey (he drove it throughout the evening) Dave Agar and Melvin went to the jail and spoke to Myron:-

"I went towards the prison fence as I used to and called out to Myron..... then Myron came which I then walk over to Melvin and stood near to the NTV away from Myron and Melvin whom were chatting through the prison fence, not long Melvin came to me and told me we have to leave as if he was in a hurry, both of us walk towards the beach side and headed to Boe District, as we reached the Telecom, he told me not to speak to anyone because the plan is he is going to get petrol so Myron can burn down the Police station and prison....."

[Exhibit P1 p1-2].

The three of them filled containers with \$15.00 worth of petrol and diesel:-

I then walk back to Andrew and told him that the area is clear, both of us walk over between the Prison and NTV and saw Myron inside the prison fence waiting, Andrew instructed me to take off the three containers and one hand held radio and give them Myron, I did what I was told, Myron grabbed the three containers and a hand held radio then left Myron.....

[Exhibit P1 p3]

The fire started soon after. The irresistible inference of that evidence is that Myron started the fire once he had the fuel.

I have quoted from Agar's statement for convenience sake. His oral evidence was to the same effect but in less detail: three of them – he, Melvin and Andrew – took fuel to Myron, a prisoner in the jail: not long afterwards the police station was on fire and burnt down.

On Agar's evidence this was a joint enterprise: each of the four of them is equally guilty irrespective of the part he took in the activities which led to the burning down of the station.

While bearing in mind that Agar was both an accomplice and an informer and that I must scrutinize his evidence with great care before accepting it, my strong impression was he was telling the truth. The impression was strengthened by the similarity of his evidence and his previous statement to the police. Strengthened the more as defence counsel made no attempt in cross examination to challenge any of his evidence.

The only cross examination was of the faint implication that he may have had some reason for not being on good terms with Melvin and Myron and he was anxious to avoid being in jail so he cooperated with the police.

Only Myron in his evidence contradicted Agar by asserting that he had been asleep all the time until the police station was alight. Myron's evidence does not weaken my impression of the reliability of Agar's account.

In his address Mr. Whitlam Togamae for Melvin and Myron, relied on section 362 of the Penal Code"-

"A person cannot be convicted of an offence on the uncorroborated testimony of an accomplice or accomplices."

Mr. Togamae argued that there was no corroboration of Agar's evidence but that argument overlooks the evidence of three prosecution witnesses which does provide corroboration.

Juvenen Edward was at home on the night of the fire:-

"Melvin came to our place, with a friend don't know who"

That goes only so far as to corroborate that someone was driving a vehicle in which Melvin was a passenger.

Stronger corroboration is the evidence of Mendel Samson:-

"on the night of fire at home with family, vehicle came: called me Melvin and Andrew: Melvin spoke to me : asking for Dave. Told him Dave not here: gone for physical, nothing else said: Andrew said nothing. In vehicle on passengers side. Andrew driving: can't remember time.

Andrew Bailey as was his right, did not give evidence nor was any evidence called on his behalf. No contradiction of Mendel Samson's evidence that he saw Andrew driving the vehicle.

Finally, Mr. Roy Harris, the Fire Chief (whom on his qualifications I accepted as an expert) expressed the opinion that the cause of the fire was "Foul Play".

[Mr. Harris's reports are exhibits P2A and P2B]

There is sufficient corroboration to satisfy section 632 of the Code. I am satisfied beyond reasonable doubt that the three men are guilty of arson as charged.

Although there was little argument, I'm inclined to think the charge of Sabotage duplicates the charge of Arson: it is surplusage. Therefore I do not convict the accuseds on that count.

Hon. Robin Millhouse
CHIEF JUSTICE

07TH August, 2009.