



IN THE SUPREME COURT OF NAURU

[CRIMINAL JURISDICTION]

Case No. 164 of 2016

THE REPUBLIC OF NAURU

v.

VINCENT SCOTTY

Before: Crulci J
For the Prosecution: D. Toganivalu, DPP
For the Defence: V. Clodumar
Dates of the Hearing: 19 February, 2016, 11 March 2016
Date of Judgment: 18 March 2016

Ruling on No Case to Answer

1. Vincent Scotty is charged with one offence of unlawful publication of defamatory matter on the 4th December 2014, contrary to section 380 of the *Criminal Code* 1899.
2. At the close of the prosecution case defence counsel made an application under section 201(a) *Criminal Procedure Act* 1972 that the prosecution had not made out its case sufficiently to require the accused to make his defence.
3. At trial the complainant witness gave sworn evidence as to the events surrounding the email exchange between himself and the defendant on the 2nd and 4th of December 2014. The witness produced a printout copy of the email exchange which was admitted into evidence as an exhibit.

4. In evidence the witness accepted that the printout copy tendered to the court was not an accurate reflection of the emails that he had sent as it did not include, for example, an indication of others to whom his email may have been addressed (by way of 'cc'- a term used for copying others into an email).
5. The exhibit details three emails exchanged between the witness and the defendant on the 4th December 2014, one of which is the subject of the charge of defamation.
6. The Prosecution adduced to the court a statement of Mr. Leung dated 14th February 2016. The statement was accepted by the defence without the requirement for the witness to be called and cross-examined. The section of the statement relating to the alleged offence of defamation subject of the charge reads:
'On the 4 December 2014 I was copied in on an email sent by Mr. Scotty to Mr. Aingimea. I have read the email and am familiar with its contents. The email suggests that relations between Mr. Scotty and Mr. Aingimea are not cordial.'
7. The email referred to as having been read by the witness (In point 6 above) was not annexed to the statement.
8. For an accused to be put to his defence there must be at the close of the prosecution case sufficient evidence before the court to make out the case against the accused. One of the elements to be made out for the offence charged is that the alleged defamatory material was read or seen by another person, other than the person alleged to have been defamed.
9. There is no evidence before the Court that the email read by the witness Leung was the one containing the material alleged to be defamatory.
10. The accused has no case to answer; accordingly I dismiss the case and acquit the accused.

Justice J.E. Crulci



Dated this 18 day of March 2016