

IN THE SUPREME COURT)
OF THE TERRITORY OF)
PAPUA AND NEW GUINEA)

491
CORAM : OLLERENSHAW, J.

Wednesday,

11th September, 1968.

REGINA

v.

EDWARD JOHN WHITAKER

J U D G M E N T

September 3,
5, 6, 9,
11.
The accused, Edward John Whitaker, is charged in the indictment as amended that on or about the 24th February, 1967 he stole the sum of \$67.90 the property of Mainwak Waikamuri and others.

Mainwak and the others were members of the Be'on Social Club and so too was the accused person.

At the relevant time he was the Officer in Charge of the Be'on Corrective Institution. The Social Club had been established, and was managed and controlled by him on behalf of the warders of that Institution, most if not all of whom from time to time were members of the Club.

The main purpose of the Club was the purchase of goods at wholesale prices and the sale thereof to members at prices said to be less than the prices being charged for similar goods at stores available to the warders.

Having determined to resign from his service and having finally tendered his resignation the accused decided to wind-up the Club and this he did on the 24th February, 1967.

The Crown case is that the moneys alleged to have been stolen were part of the funds of the Club available on the 24th February, 1967, for distribution in cash amongst the members on the winding-up of the Club. The total of such funds was, it is said by the Crown, at least the sum of \$122.40 so that each of twelve members was entitled to receive the sum of \$10.20 in cash.

The Cash Book of the Club, kept by the accused, is in his handwriting and is in evidence as Exhibit "A" and folio 32 purports

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to record the receipts and the expenditure of the Club from the 1st January, 1967, to the 24th February, 1967, including what was done with the balance of the moneys of the Club upon its winding-up on the later date.

Exhibit "B", entitled :

"RECEIPTS AND EXPENDITURE

CASH AND BANK A/C

TWO MONTHLY".

is a document signed by the accused as Treasurer (Ex) of the Club and forwarded by him to his Departmental Head, the Controller of Corrective Institutions, in accordance with the requirements of the Corrective Institutions Branch.

This document contains a copy of both the Receipts and Expenditure pages of Folio 32 of the Cash Book, Exhibit "A", and it concludes with this statement above the signature of the accused

"Assets :

Cash in hand \$122.40

Distributed to 12 current financial members
as shown above".

The Crown has called some of the members shown in the Cash Book and Exhibit "B" each to have received the sum of \$10.20 and without going into the small details it is clear from their evidence that at least the sum of \$67.90, part of the moneys so claimed to have been distributed, was not in fact distributed.

That part of the moneys so claimed to have been distributed was not distributed in cash is admitted by the accused.

The Crown says that these moneys were stolen by the accused and having regard to all the evidence and the probabilities clearly arising therefrom I am of the opinion that that would be an irresistible inference unless this non-distribution is capable of explanation.

Each of these members, called as a witness, also said that he received at the time a share of the goods still held in the Club's

store and it appears that the goods so held on the 24th February, 1967, were divided between the twelve members of the Club.

The accused says and this is his defence that it is quite true that the members did not receive \$10.20 in cash as shown in the Cash Book and in Exhibit "B" but that each did receive, in addition to some cents in cash (in one case \$10.00 and in another \$2.00), goods of such a retail value that what he did receive was worth in all \$10.20.

He says that for the purpose of distribution on the winding-up of the Club he did a careful and precise stock-taking - although he made no record of this - and that the total value of this stock, that is of the goods remaining unsold in the Club's store, was taken into the Cash Book as if it were in fact not goods but cash for goods sold.

He says that it is in the item number 88 on the Receipts page of Folio 32 of the Cash Book : "24/2/67 Cash Sales, 88, \$108.92", only part of which sum, he says, consisted of monies received from the sale of goods since the receipts from sales noted in the previous item : "22/2/67 Cash Sales, 87, \$71."

I have carefully considered all the circumstances as revealed in the evidence since this trial commenced on the 3rd of this month and I have watched and listened to the accused during the two or so days that he has been in the witness box. I have no hesitation in saying that I do not believe him.

I do not believe that the value of the stock was brought into the Cash Book as if it had been sold for cash or at all and I do believe that the entitlement of the members to share in the distribution of this stock was something quite separate from and in addition to their entitlement in the distribution of the Club's cash as shown by the Cash Book to have been available for distribution and as falsely shown to have been distributed to them.

In the quarto sheet which is part of Exhibit "G", which has been called a Balance Sheet and which the accused was shown in the box and admitted was his document and is in fact signed by him

(although his Counsel in objecting to its admission in evidence submitted that the Crown had not proved it) the accused showed his appreciation and employment of the distinction between stock-in-hand and cash-in-hand. Never before had he brought stock-in-hand into the Cash Book.

I have formed the opinion that the accused is a smooth tongued rogue and in all the circumstances I find his explanation to be quite incredible. It is, in my view, the desperate fabrication of a guilty man, a fabrication that could be called impudent were it not for the fact that it was given by the accused person in jeopardy.

I should say something about some of the other matters that were canvassed by both Counsel during the trial.

It follows from the accused's admission that there must be other members, not called by the Crown, who did not receive all their \$10.20 as shown to have been paid to them in the Cash Book and Exhibit "B". It is hardly a matter of speculation where what they did not receive went. So, too, I can see no other probable destination than the accused's own pocket for the sum of \$186.07 in the item entered in the Expenditure Page of Folio 32 of the Cash Book thus : "24/2/67 Cash, 396, \$186.07" and it is not unlikely that at least part of the benefit of the sum of \$474.10, shown on the same page to have been paid on the 24th February, 1967, in cash to New Guinea Co. Ltd. went the same way although it is possible that the accused shared such part of this benefit with Boiran, the only other member of his so-called "Sisiak Social Club".

During his trial the accused made opportunities to emphasize that he had sacrificed his own time and, indeed, his own money to assist his native warders by carrying on the Be'on Social Club for their benefit. I am not impressed and I think that he did stoop to appropriating the proceeds of Michael's share for himself. In his evidence he put the responsibility for this upon the warder Henry but I prefer to believe Henry, who said that he paid over the proceeds of Michael's share to the accused believing that the accused would see that Michael, who was not at the Institution at the time, would

get his money. I mention this to remove any possible suspicion from Henry.

It must be noted that I am not concerned with any of these other monies, which I have mentioned, in as much as they are not the subject of this charge.

I find that the Crown has proved the charge beyond all reasonable doubt and I return a verdict of Guilty.

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F O R S E N T E N C E

The offender has been found guilty of stealing \$67.90.

I do not repeat what I have said in my judgment.

He was the Officer in Charge of the Corrective Institution at Be'on, near Madang, and the persons whose money he stole were the warders under him in that Institution.

He took advantage of the relationship between himself and his uneducated warders, who looked up to him and trusted him. It was not only a relationship of European to native but also of superior to inferior in the service. It was important that he should set an example of honesty for them and it is not unimportant that they and such other natives as have become aware of this case see that he is appropriately punished.

In all the circumstances and not overlooking the sentences I impose upon native offenders but remembering that imprisonment is a greater punishment for a European in the offender's position than for a native, I consider that the appropriate sentence is one of imprisonment with hard labour for six months and that is the sentence I impose.