

IN THE SUPREME COURT OF)
THE REPUBLIC OF VANUATU)

Criminal Case No 418 of 1985

BETWEEN:

PUBLIC PROSECUTOR

Plaintiff

AND:

ANDRE MONTAIGUE

Defendant

Coram: Coakley J
G Vasaris for Defendant

JUDGMENT

[CRIMINAL LAW - mens rea - statutory definition of intention]

The salient facts in this case are that on 1st November 1984, Mr. Masing Andrew (P.W 2), who is a meat inspector working in the Agricultural Department of Government, received certain information from an employee working at the Cannery. As a result he went to the butchery section of Burns Phillip Supermarket in Kumul Highway where he spoke to the Defendant, who is a butcher and in charge of that section. The Defendant gave PW2 admission into the chiller where meat is stored. PW2 inspected the carcasses and noted that there were four hindquarters and forequarters which did not have any brand on, by which he meant that there was no mark which had been put on by an inspector which is in the form of a red stripe running from neck to rump on either side.

Some days later when the Defendant was interviewed by a Police Officer he volunteered to write down his own statement, which reads:

"I declare having been offered on November 1 1984 by SAFF Vila (Mr Sabro) two cows for butchery use. In good faith these cows were purchased by me as normal stock. When the meat inspector came to inspect the butchery, he told me that those cows were not for public use, only for canning. I told him then to ask Mr Sabro from SAFF to send the truck and remove the two carcasses. The two cows were taken away by SAFF truck and I told Mr Sabro to be more careful in future not to sell us any meat not approved by the meat inspector."

The defendant was charged with an offence contrary to Section 5(2) of Joint Regulation 19 of 1977 in that the particulars of offence allege that he had in his possession on or about 1st November 1984 on the premises of Burns Phillip (Vanuatu) Ltd., two carcasses intended for resale to the public which had not been inspected and passed as fit for human consumption.

Mr Vasaris who represented the Defendant contends that reading Section 5 as a whole, one must import into Subsection (2) the ingredient of mens rea. He cites in

support the recent case of *Gammon (Hong Kong) Ltd. v. Attorney General of Hong Kong* (1984)3 WLR 437. An extract appearing in the cumulative supplement to the 41st. Edition of *Archbold*, from which I quote "Lord Scarman in delivering the advice of the board stated that those decisions (having referred to *Sherras v. De Rutzen* (1895) 1 Q.B. 918, *Lim Chin Aik v. R.* (1963) A.C. 160, *Sweet v. Parsley* (1970) A.C. 132), founded the following propositions: (1) there is a presumption of law that mens rea is required before a person can be held guilty of a criminal offence; (2) the presumption is particularly strong where the offence is 'truly criminal' in character; (3) the presumption applies to statutory offences and can be displaced only if this is clearly or by necessary implication the effect of the statute; (4) the only situation in which the presumption can be displaced is where the statute is concerned with an issue of social concern eg public safety; (5) even where a statute is concerned with such an issue, the presumption of mens rea stands unless it can also be shown that the creation of strict liability will be effective to promote the object of the statute by encouraging greater vigilance to prevent the commission of the prohibited act."

The Public Prosecutor submitted that Section 5(2) stood on its own and it did create an offence of strict liability. If the prosecution had to prove a defendant's intent in the commission of an offence, then that would virtually be an escape hole for any butcher against whom any proceedings were brought under the subsection. I am in entire agreement with that view.

But the statute law, which is applicable in Vanuatu, covers the circumstances of this case on the issue of criminal intent. This is set out in Section 6 of the Penal Code Act No 17 of 1981. To paraphrase that Section, one starts by stating that any act which is contrary to the Criminal law requires an intention, though such an act may consist of an omission. Sub-section (2) is even more specific:

"No person shall be guilty of a criminal offence unless it is shown that he intended to do the very act which the law prohibits; recklessness in doing that act shall be equivalent to intention."

Finally Subsection (4) is very much in point:

"A person shall not be guilty of a criminal offence if he is merely negligent, unless the crime consists of an omission. A person is negligent if he fails to exercise such care, skill or foresight as a reasonable man in his situation should exercise."

The Defendant admitted that at no stage prior to PW 2's visit had he examined the two cows which he had ordered as normal stock; in using that expression, it is abundantly clear that the meat in question was intended for sale to the public. If ever there was a case where a person closed his eyes to the requirements of the law, this was one. It may be that the manager of the cannery, upon whom the Defendant relied, was more blame-worthy but further proceedings under the Regulation would appear to be time-barred under Section 58 of the Penal Code.

It was for these reasons that I found the charge proved at the conclusion of the hearing of the case, and recorded a conviction against the Defendant.

2nd January 1986

M.J.R. Coakley