IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 1517 of 1976

THE REPUBLIC

vs.

DERAIMON DOWEDIA &
GARETH HERMAN

CHARGE:

1. Breaking into a building with intent to commit a crime: Contrary to Section 422 of the Criminal Code Act, 1899 of Queensland - The First Schedule.

2. Being in a building without lawful excuse: Contrary to Section 424A(a) of the Criminal Code Act, 1899 of Queensland - The First Schedule.

JUDGMENT:

The case for the prosecution is that the two accused, in the early hours of the 16th of November, 1976, jointly and severally broke into and entered Halstead Store with the intent to commit a crime therein and thereby were inside the Halstead Store without lawful excuse. The second accused has pleaded guilty to the two charges.

There is no evidence of an overt act on the part of the first accused, made towards the commission of any of the two offences with which he is being charged. The only incriminating bit of evidence against him is that he was near Halstead Store and ran away on seeing some people come there. Therefore, the evidence is purely circumstantial and has to be examined very carefully to ascertain whether the first accused did in fact break into and enter the store and whether having done so he remained inside without lawful excuse. The two prosecution witnesses, Phyllis and Royden, have both testified to the fact that the first accused was seen near the store. When challenged he ran away and witness Royden gave chase. The accused, in his evidence, has admitted running away and has given the explanation that he did so because he was afraid. He has also given an explanation as to how he came to be on the spot at that time of the night. His evidence is that the second accused woke him up and wanted petrol for his car which

was near the Store. He took the petrol and a syphon with him and after putting the petrol into the car, he called out to the second accused and found that he was answering him from inside the store. It was at this stage that the prosecution witnesses turned up and he ran away from the scene because the second accused was inside the store.

Although witness Phyllis has referred to two people being in the car when she saw it near the N.C.S. Bakery, she has not identified the first accused as being one of them. Witness Royden, who gave chase, has stated that he could not catch up with the first accused. When a car stopped and the lights fell on him the accused walked back towards him and he spoke to him.

Circumstantial evidence must be of such a nature that it should lead to the irresistible conclusion that it was the accused and no other that committed the offence. I have examined the evidence very carefully and I am of the opinion that the circumstantial evidence is of such a nature that it would be unsafe to act on it.

The explanation given by the accused as to how he came to be at the scene may be true. The prosecution has not discredited his version. The second accused may have come to the first accused for petrol and it could well be that the first accused was totally innocent of what was happening at the store. For these reasons, a doubt arises in my mind as to the part played by the first accused on the night in question and in view of this I give the benefit of the doubt to the first accused. I, therefore, hold that the prosecution has failed to prove beyond all reasonable doubt the charges against the first accused and I find him not guilty on both counts and acquit him.

R. L. DE SILVA
Resident Magistrate

9th March, 1977