

IN THE DISTRICT COURT OF NAURU
Criminal Jurisdiction
Criminal Case No. 511 of 1977

THE REPUBLIC

v.

PIWI MOSES

CHARGE:

Offensive behaviour in a dwelling house:
Contrary to S.5(d) of the Police Offences
Ordinance 1967.

JUDGMENT:

The accused is charged with offensive behaviour in a dwelling house, contrary to Section 5(d) of the Police Offences Ordinance 1967. The first matter with which the Court must concern itself is the meaning to be given to the words "offensive behaviour" appearing in that section.

The Ordinance contains no definition of the expression, offensive behaviour, but the same words appearing in Section 25 of the Police Offence Act 1928 of Victoria were considered in the case of Worcester v. Smith (1951)V.L.R.316. That section creates an offence of behaving in an offensive manner. In delivering judgment, Mr Justice Bryan at Page 318 said:

" Behaviour, to be offensive within the meaning of that section, must, in my opinion, be such as is calculated to wound the feelings, arouse anger or resentment or disgust or outrage in the mind of a reasonable person. "


In my view, that is the test to be applied in respect of the offence charged in this case.

Reviewing the evidence, the only action on the part of the accused proved beyond reasonable doubt which could be

relied upon as constituting offensive behaviour was the act of the accused striking a water tank with a palm frond. In my view, such an action falls far short of offensive behaviour.

There were allegations that the accused threatened to damage property, and threatened to assault the complainant, but there was no admissible evidence capable of constituting proof of such allegations. The statement in answer to charge made by the accused at the Police Station consisted of one word "adura" which in English is "guilty". That statement is equivocal and can only be relied as an admission by the accused that he did strike the water tank with a palm frond, and nothing more.

In these circumstances, I find that there is no evidence that the accused acted offensively and find him not guilty and acquit him of the charge. Had the prosecution led evidence to prove the allegations of threats to damage property and threats to assault the complainant, the position may have been different.


K.P. WHITCOMBE
Resident Magistrate

15th September, 1977.