

IN THE SUPREME COURT OF THE TERRITORY OF PAPUA AND NEW GUINEA
THE UNIVERSITY OF PAPUA & NEW GUINEA
THE LIBRARY

WILLIAM LESEL COLLINS

JUDGMENT

Bignold J.
6/5/50

The accused in this case WILLIAM LESEL COLLINS appears before

this Court charged upon three counts that he being then an officer in the Public Service of the Territory of Papua and New Guinea and being

charged by virtue of his office with the custody of public revenue did:-

(a) On or about the 30th day of November, 1949 in the Territory

of Papua knowingly furnish to one William Neville Marjoriebanks Chester an officer in the said Public Service a false

statement of monies entrusted to his care as such officer;

(b) On or about the 31st December, 1949, in the Territory of

Papua knowingly furnish to one William Neville Marjoriebanks Chester an officer in the said Public Service a false state-

ment of monies entrusted to his care as such officer;

(c) On or about the 31st day of January, 1950 in the Territory

of Papua knowingly furnish to one William Neville Marjoriebanks Chester an officer in the said Public Service a false

statement of monies entrusted to his care as such officer.

The accused who is represented by Mr. O'Driscoll of Counsel has

pleaded NOT GUILTY to each of the three counts thus throwing upon the

Crown the burden of strict proof of every element of each charge in the indictment.

A strong presumption of innocence is raised under our system of the administration of justice in favour of every accused person and the Crown must attain a high standard of proof to displace that presumption.

The high standard required is attained when the Crown establishes every element of the offence charged beyond a reasonable doubt. If the proof falls beneath that high standard then the accused is entitled to what is known as the benefit of the doubt and to his acquittal.

The burden of proof lies upon the Crown; it is not for the accused to disprove anything.

The accused in this case at the conclusion of the case for the prosecution elected not to give any evidence or make any statement, a course which he has every right to adopt, if he so desired.

It is necessary before dealing further with the matter to make some determinations of fact from the evidence adduced before this Court and then to consider what are the essential elements of the offences charged and finally to consider whether or not the evidence of those

2/ elements has been established beyond a reasonable doubt.

The evidence shows that the accused was at all material times a Senior Clerk Grade III in the employment of the Administration of the Territory of Papua and New Guinea.

The accused took up his duties at Samarai as Senior Clerk for the Milne Bay Division of which Samarai is the Divisional Headquarters on the 7th March, 1949.

The senior officer in charge of the Division was at all material times John Rollo Foldi, who had taken up his duties on the 7th March, 1949 as District Officer.

The District Officer, Mr. Foldi, delegated to the accused the responsibility for the cash and documents relating thereto at the District Office at Samarai and the evidence satisfies me that whilst there was an ultimate overall responsibility of the District Officer the accused became charged by virtue of his office with the custody of the public revenue at the District Office, Samarai.

The accused had the custody of the keys of the safes in the District Office and from the inception of his duties at Samarai exercised direct control over the financial operations of that office. In addition he performed a multitude of other important tasks outlined by the District Officer, whose evidence leaves no doubt that the accused was both a very efficient and a greatly overworked officer.

In order to obtain a proper understanding of this case it is necessary to know something of the District Office at Samarai. In addition to normal administration business being transacted at that office, postal facilities were provided as well as a Commonwealth Savings Bank agency being conducted there. It was a busy place and next in importance in the Territory of Papua to Port Moresby the Seat of Government.

The postal and banking business was carried out by a temporary female officer, who drew the funds for her current working from the public revenue under the control of the accused.

At the end of each month the accused prepared monthly cash sheets headed "District Officer's Cash book" in which was brought to account all the cash transactions for the month in the district office to which the sheets related.

The accused then made up the totals and these had to be reconciled with a statement of cash actually on hand, which was endorsed on the sheet and in the event of a discrepancy the adjustment had to appear on the cash sheet.

The monthly cash sheet for July, 1949 discloses for example a small deficiency made up by the accused.

After the monthly sheets are prepared by the officer in immediate control of the financial operations of the District Office, they are certified by him and presented to the District Officer who checks the cash and supporting documents with the totals and if satisfied the

District Officer himself joins in signing the certificate.

The certificate is in the following form -

"CERTIFIED CORRECT and that receipts have been vouched from receipt books and other documents and that expenditure Vouchers have been vouched and that the balance of cash shown above agrees with the actual cash in hand.

.....District Officer.

.....Chief Clerk."

It would appear from the evidence that the term "Chief Clerk" means at out-stations the "Senior Clerk".

The monthly cash sheets are then forwarded to the Treasurer by the District Officer.

The monthly cash sheets from July, 1949 to February 1950 inclusive were tendered in evidence by the prosecution and admitted. These sheets show that they were compiled by the accused except for a very few entries and none of them disclose any substantial discrepancy in cash that is between the cash actually on hand and the balance which the monthly sheets indicated should be on hand.

The Commonwealth Auditor, Mr. Chandler made an audit of the District Office, Samarai, on the 22nd February, 1950 without discovering any substantial deficiency in the cash and again on the 10th March, 1950, as a result of certain information Mr. Chandler began an audit, but as will be seen on this occasion the audit was interrupted.

The evidence satisfies me beyond any doubt that there was a deficiency of £200 in cash under the control of the accused in November, 1949 at the District Office and that the deficiency of £200 or thereabouts continued in the following December and January and that the accused concealed the deficiency from the Auditor by placing borrowed money in office cash and concealed it from the District Officer (Mr. Foldi) by the production of internal vouchers.

The money to conceal the deficiency when the audit was made on 22nd February was borrowed from one Thomas Leslie Crawford being the sum of £160 the deficiency having been reduced by payments in by the accused from £200 to £160, if his account is true.

The £160 was returned to Mr. Crawford on the 10th March, 1950 the day the Auditor started a snap audit of the District Office.

The accused then borrowed the money from the Postmistress from Public Revenue under her charge, but she seeing the Auditor counting money realised that there was something wrong and spoke to her husband.

Just before lunch on the 10th March, 1950 the accused in the presence of the District Officer (Mr. Foldi), the Auditor, Mr. Chandler and Mr. Nielson (the husband of the Postmistress) admitted that he had a deficiency which he had been trying to conceal.

He further admitted to them that he first became aware of the deficiency in November and that he thought it would turn up so he concealed it from Mr. Foldi at the monthly check and that the money did

4

not turn up so that he was trying to conceal its absence until he could make it up.

On the 10th March, 1950, interviewed by Assistant Sub-Inspector Evans he admitted the shortage of £200 in November which he had reduced to £160 by March and that he had concealed it.

On the 30th March, 1950, Sub-Inspector Rackeman in company with Sub-Inspector Neilson, interviewed the accused who said in reply to questions that he had operated as collector of Public Monies at Samarai though never gazetted as such. He further stated that he had compiled the monthly cash sheets produced to him being the ones for July, 1949 to February, 1950 inclusive (Exhibit A.) He then admitted that the actual cash on hand at the end of February was £160 deficient, and that on February 22nd he had borrowed £160 from Mr. Crawford and immediately put the borrowed money in the District Office cash.

He admitted that the sheets disclosed an amount of £200 in excess of the cash actually held and that he had put in £40 himself so that the deficiency in February was reduced to £160.

The accused told Mr. Rackeman that he had concealed the cash shortages from Mr. Foldi, the District Officer, when he made the monthly check by means of internal vouchers.

The evidence then satisfies me that the cash sheets for the months of November, 1949, December, 1949 and January, 1950, which related to public revenue, were false to the knowledge of the accused though he had certified to them as being correct accounts of the financial position at the District Office for the periods to which they related.

It is essential to see what are the elements of the offence charged in each count in order to arrive at a conclusion as to the standard of proof attained by the prosecution.

The Section under which the charges are laid reads as follows:-

442. Any person who

being an officer charged with the receipt, custody or management of any part of the public revenue or property knowingly FURNISHES any false statement or return of money or property received by him or entrusted to his care, or of any balance of money or property in his possession or under his control is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

It is, of course incumbent upon the prosecution to prove that the offence took place in the Territory of Papua.

Now as to the first element, namely whether the accused was an officer CHARGED with the receipt, custody or management of any part of the public revenue. Learned Counsel for the defence urges that the accusee cannot be said on the facts to be the person "Charged" with the receipt, custody or management of the monies at the District Office, because only one person was so charged and that was the District Officer. In support of his contention he points out that the very designation

of the account demonstrates unmistakably that it was the District Officer who was charged with the receipt, custody and management of the money at the District Office and nobody else. He contends that the fact of handling the money does not in any way alter the position as the accused would then be acting purely as an agent of the District Officer.

I do not agree with this contention, and in my view it is plain that the accused had at his instructions been charged with the responsibility for that part of the public revenue as was at the District Office and such responsibility was what would naturally follow by the relegation to him and from the nature of the duties of the accused's office of Senior Clerk. The evidence shows I think that the accused accepted that responsibility because of the nature of the work he performed and the personal liability he assumed, when he made up deficiencies disclosed by the monthly cash sheets.

The second matter urged forcefully by Mr. O'Driscoll of Counsel for the defence was that there is no evidence before the Court that the accused "Furnished" to the Treasurer William Neville Marjoriebanks Chester any false statement. As I understand this submission, it is that the mere provision of a certificate of correctness does not constitute a furnishing by the accused of the return to the Treasurer, but that the certificate of correctness was one really to the District Officer himself and that the District Officer if satisfied then furnished the return.

After careful consideration of the practice in regard to Monthly cash sheets obtaining in the Territory as disclosed by the evidence, I am satisfied that the monthly cash sheets when transmitted constitute a return to the Treasurer by the Officer's certifying them. I do not think the actual channel of transmission of the documents affects the question at all.

The Senior Clerk, the accused, when he detached from the book of account compiled by him the monthly cash sheets which he certified as correct would, I am satisfied, be fully cognizant that they were returns to the Treasurer, I am satisfied beyond reasonable doubt that the accused furnished to William Neville Marjoriebanks Chester the monthly cash sheets the subject of the counts in the indictment, which sheets had been compiled and certified by him for that very purpose and further that he well knew that they were false in respect to the cash on hand.

I am satisfied from the evidence before me that the Crown had discharged the onus of proof resting upon it in respect of each count in the indictment.