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

AT PORT MORESBY

CRIMINAL JURISDICTION.

CORAM: OLLERENSHAW A.J.

Monday, 8th March, 1954
at 9.30 a.m.

R. -v- JOSEPH AH WONG.

REMANDED FOR SENTENCE.

The accused was arraigned before me on the 4th instant in the terms of an indictment informing the Court that: "Joseph Ah Wong in the Territory of Papua on the 5th day of February, 1954, stole seventeen eight-inch fibro-cement pipes the property of the Commonwealth of Australia."

He pleaded Not Guilty. Mr. Norman White appeared as Counsel for the accused and informed me that he spoke and understood English.

On the 5th instant, upon the completion of the evidence of John Fisher, Sub-Inspector of Police, and of Thomas Charles Yarrow, Superintendent of Stores of the Department of Works, Sir Colman O'Loughlen, who conducted the case for the Crown, applied to amend the indictment by substituting the word "seven" for "seventeen".

I granted this application, upon Mr. White consenting, and he announced that the accused desired to plead Guilty to the indictment as amended.

Sir Colman stated that the Crown was prepared to accept this plea.

I consider that this amendment and acceptance were justified upon the evidence given before me, without recourse to the depositions. (See R. v. Soanes (1948 1 All E.R. 289); although the question there was the acceptance of a plea of guilty to a lesser offence, it seems to me that the principle of that case applies).

I caused the amended indictment to be read to the accused and, in answer to my questions, he stated that he had heard

the evidence at the committal proceedings and that he now pleaded Guilty to the indictment as amended.

I convicted him, for more abundant caution, as a Jury and upon his admission and the evidence before me (see R. v. Hancock (1931) 100 L.J. K.B. 419), cited by Sir Colman, although, as he did, I question the application of that decision when the trial is before a Judge without a Jury and the accused is not given in charge to a Jury).

Sir Colman did not desire to address me as to sentence, properly refraining from emphasizing those matters that had come out against the accused in the evidence given before me and in the depositions, which were also now before me. Sub-Inspector Fisher, or, at his instance, Sir Colman, informed me that the stealing of Commonwealth property of the nature mentioned in the indictment had been prevalent for years and I gathered that Europeans were, in some way, involved.

Mr. White addressed me and, from his knowledge of the accused, as his Solicitor for some years, was able to give me helpful information about him. Sir Colman did not seek to controvert this information. I appreciate that he would not be in a position to do so insofar as it was peculiarly within the knowledge of Mr. White, however I feel sure that Mr. White, as Counsel, understands his responsibility to the Court.

He made his points with a commendable brevity, putting clearly what he thought was to be said for the accused.

In the particular circumstances of this prosecution, he relied upon the prevalence of this type of offence. His best point was, I think, as I understood him, that the prevalence of the stealing of property of the kind described in the indictment was not a factor to be taken into consideration or, at least, was not a factor that should add to the sentence, inasmuch as this was the first prosecution for such an offence, in spite of its prevalence for many years. He also urged that the mere prosecution of the accused would sound a warning and that he was already, to some extent, in the position of a scapegoat.

He also referred to the principles, which he considered had been followed in the administration of British justice and were proper to be taken into consideration by me in deciding whether I would, as he submitted I should, treat the accused as a first offender and release him upon a recognizance.

The accused did not wish to say anything for himself.

I remanded him for sentence until today, without bail.

* * * * *

It appears that the Commonwealth, through the Department of Works, acquired from the Treasury Disposals Section, Department of the Treasury, Port Moresby, certain underground pipelines, formerly used by the Military Authorities for the supply of water to the Port Moresby Area. The Department recovers these pipes, or some of them, by entering into contracts, whereby the contractor is permitted to dig up the pipes and is required to deliver them to the Department for reward to himself.

It also appears that numbers of these pipes have been recovered for private use by persons without authority and that for some years such persons have been escaping detection or prosecution. Whether this is due to laxity on the part of the responsible officials or the difficulty of detection or both, I do not know. Mr. Yarrow did say, in the committal proceedings, that each loss of pipes had been investigated and I can readily see some difficulties in the detection and the successful prosecution of this type of offence.

The accused, however, is the first person who has been prosecuted upon a charge of stealing these pipes.

He was a contractor under a contract, of the type to which I have referred, dated the 22nd September, 1953. He commenced the work of digging up the pipes about the middle of January, 1954, but did not deliver any pipes to the Department. On the date charged, he was digging pipes at the 15th A.R.D. Area, some miles from the township of Port Moresby. He did not deliver the pipes, the subject of the charge, to the Department and he disposed of them elsewhere. The physical removal of the pipes was done by persons engaged by him, nevertheless he was properly charged as a principal offender.

I cannot overlook that his position as a contractor, having the right to dig up the pipes, gave him a special opportunity to cheat the Department, an opportunity of which he took advantage. He also showed some cunning when his offence was being investigated, but this is not an unusual quality in a person of his origin and experience.

However, according to the evidence, he has a clean

record. He has lived near Port Moresby all his life and he is, or was, a trader. He is fifty years of age and supports a wife and one child aged 10. His other child, now aged 18, supports himself. As a person of part-native and part-Malayan origin he would not be unimpressed by the impunity with which this type of Commonwealth property has been illegally removed and used by other persons, including Europeans.

He had an earlier contract with the Department under which he delivered to it thousands of these pipes. His performance of that contract must have given the Department complete satisfaction, otherwise it would not have granted him a fresh contract. This current contract he will now lose, without any possibility of obtaining another.

Just prior to entering into the present contract, he had a period of nine months sickness. About twelve months before his sickness he was involved in civil litigation about the loss of his boat. He recovered damages and satisfied his debts. It may be that, upon recovering his health, there was some special temptation to rehabilitate himself by doing what he must have been aware others had done with impunity. Upon the figures given in evidence he had little more to gain from dishonesty than he would have been entitled to from honesty. The Department, under his contract, would have paid him at the rate of approximately 3/7d per foot for the pipes, assuming that they were undamaged. The Department's sale price, and I am told that it sells these pipes, would have been approximately 4/3d to 4/4d per foot. If the accused sold them at the Department's price, his gain would have been 8d to 9d per foot. I do not know if the demand for these pipes exceeds the supply available from the Department, with the consequences so well known in the recent past in the case of many commodities in many places besides Papua. However, upon the figures, the actual loss to the Department, in respect of the seven pipes charged in the amended indictment, based upon the amount it would have paid the accused for their recovery and the price it would have charged, if it sold them, is approximately £3.

In all the circumstances, I consider that I should impose a sentence of imprisonment and suspend the execution of this sentence under Section 656 of the Criminal Code.

Joseph Ah Wong, I sentence you to imprisonment with hard labour for three months. I suspend the execution of this sentence upon your entering into a recognizance in the sum of £50, such recognizance being conditioned that you shall be of good behaviour for the period of twelve months from this date and shall

not during such period do or omit to do any act whereby the recognizance would become liable to be forfeited under the provisions contained in Section 656 of the Criminal Code.

You will be discharged from custody as soon as you have entered into this recognizance. Upon your discharge, you will be given a written notice setting out the conditions under which you will be committed to prison to undergo your sentence. You may also become liable to forfeit this sum of £50.

If you are in doubt about what is required of you under the conditions of your recognizance, you should seek your Counsel's advice upon your discharge.

I hope that your experience in this prosecution and your temporary loss of liberty since last Friday will help you to appreciate your freedom and keep you from dishonesty in future.

I hope, too, that you will understand that the law which you have broken is extending to you the mercy which, through your Counsel, you have asked for. It is giving you this chance to prove that you can live honestly. If you fail to do so you will not get another chance like this one.

A/J.