

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

CORAM : OLLERENSHAW, J.

14th April, 1969.

10 a.m.

THE QUEEN

v.

SHIRLEY JOAN ALICE HOLLAND

JUDGMENT.

10, 11  
14  
PORESBY.  
Ollershaw J.

The accused person, Shirley Joan Alice Holland, is charged before me in an indictment that alleges that on the thirteenth day of February in the year One thousand nine hundred and sixty-nine being a servant of Steamships Trading Company Limited she stole six dollars and eighty cents which had come into her possession on account of the said company.

Both counsel have submitted that the sole question in the trial is whether I, as a jury, believe her in her explanation of how she came, as is admitted, not to pay this money into the cash register and ring it up thereon as was her duty. There is also the very real question in this trial and that is, even if I do not believe her explanation: does the evidence raise a doubt in my mind as to her guilt. If such a doubt is raised, then that I cannot believe her as a positive finding is immaterial and she is entitled to a verdict of: "Not Guilty".

At the relevant time she was employed as a sales assistant at the cosmetics counter of the Company in its main store in Port Poresby. She was one of the five employees at that counter. The senior employee and the person in charge of the cosmetics section was Mrs. Bolt, whom I say in passing seems to me to be a person of integrity and honesty and who is a witness whose evidence has to some degree helped me in this case. She was called by counsel for the accused person. I have no doubt that the accused person, the second in charge at this counter, is a person of ability and talents as has been deposed. The other employees at this

counter were two native girls, the name of one doesn't matter, the name of the other, she was called as a witness, was Mou Toea. There was also a native lad who apparently brought stocks down to the counter from their reserve storeroom and did various other things.

I come to the lunch hour on the day. When I say the lunch hour, I should mention that lunch hours were staggered between these employees, so that there was always a European in charge. Mrs. Bolt went off at 12 o'clock, and, apparently, so did the other native girl and the lad wasn't there. That left the accused woman and the native female assistant, Mou, on the counter. It was during this lunch hour beginning at 12 o'clock that the offence is alleged to have taken place. At about 20 minutes past 12 a customer came to the counter and purchased from the accused a pair of sunglasses priced at \$6.80. At this time, as I have said, the accused and the native Mou were the only persons on the counter. Having made the sale, the purchaser was careful to leave the counter very quickly, because he happened to be Inspector Giddings who, by arrangement with the Company through its Security Officer, was taking part in a trap set against the accused woman, about whom a suspicion appears to have been raised upon the information of Mou Toea, the female native assistant at the counter, to whom I have already referred. This suspicion may have been ill-founded, and its existence, wherever it did exist, is of no concern. As I say, having paid over his \$6.80, Inspector Giddings was careful to disappear very quickly before a docket could be handed to him. The accused person did not put the \$6.80, that he had paid her, in the cash register, nor did she at any time ring it up. Those facts are undisputed. I also make some further findings and here I rely on the evidence of Mou and, since an attack has been made upon her, I should say that I regard her as a witness of truth. She had some human disabilities, for instance, as to time, like most native people; she wasn't clear whether this happened in February or March. Indeed, she thought it happened in March, and she thought that she had first met Inspector Giddings on the day before

whereas it appears that she was introduced to him a week before the 13th of February. She says that she saw the accused put the \$6.80 in her pocket and then put away some sunglasses. This involved only one pair of glasses. Inspector Giddings had selected from a card, or some sort of a stand on the counter, the pair of glasses which he wanted to buy. The accused, and I don't doubt correctly, thought that these weren't suitable for a man, and she brought out a pair from a shelf and showed them to him, and he rejected them. So she had this pair to put away. Now says she put the \$6.80 in her pocket, she put the glasses away, and then she left the counter and went to some place at the rear and smoked a cigarette. I accept this evidence. She went to a table, probably the table in an alcove somewhere near the entrance to a room that was used by the staff and in which indeed the accused had her bag that day, her bag, and purse and so on. She may have gone into the room and put the \$6.80 in her purse as counsel for the Crown suggests.

The story of the accused and I don't accept<sup>it</sup>/is that, having made this sale - and she wasn't sure whether she still had the money in her hand or had put it in her pocket, and she wouldn't deny that she put it in her pocket - her attention was distracted by some customer who wanted something that the accused was unable to supply. Having spoken to this customer the accused recalled that she had in her possession in her bag a \$10 note, which she had withdrawn from her savings account two days before, and which she wished to change before her own lunch hour at 1 o'clock during which she proposed to make some small purchases. Here, the evidence of Mrs. Bolt was rather interesting: Mrs. Bolt says that it is quite common for staff members to do this sort of thing, to change their money by using the cash register. She said that it was her practice to get another European member of the staff to change her money for her at the cash register but that if there were no such member available she would not use a native employee and I assume that in such a circumstance she would do it herself. The time was 20 or 25 minutes past 12 o'clock and Mrs. Bolt had gone off at 12 o'clock. There was all

the morning during which the accused person could have changed the \$10 note with the assistance of Mrs. Bolt. The accused person gave no evidence on this point. Nevertheless it would be easier to believe that she forgot about it until after Mrs. Bolt had gone to lunch than to believe her story that she forgot to ring up the \$6.80, to which I will come.

The accused, and this is the explanation that she gives, having got the \$10 note from the room to which I referred, and having made another sale for, I think, \$3.55, the cash register being open, she put into it 80 cents and this \$10 note which she wished to change. She took out \$4, which, with the \$6 from the sale to Inspector Giddings, made the change for \$10 note. She forgot, she says, to ring up the \$6.80. There is no need for me to say what happened afterwards. Inspector Giddings carried on with the investigation and interviewed the accused person in the office of the security officer, who is not available to give evidence. I don't think that the accused person was frank with Inspector Giddings about the money in her possession, and I don't believe that she did, as she says, offer him her passbook saying that there was also some money in it besides the money she showed him by handing him her purse. Inspector Giddings, on this point, was not cross-examined.

At the time when this trial was drawing to a close on Friday, I felt that, notwithstanding the evidence of character that had been given on behalf of the accused by two witnesses who in this community are outstanding in themselves and indeed in any community would be, notwithstanding that evidence, and because I had had much time to think about all the evidence and I had observed the accused woman I felt that it did not raise in my mind any doubt that she was a thief. At 20 minutes to 4 o'clock, at the conclusion of counsels' addresses, I reserved my judgment until this morning, not, perhaps, expecting that I might come to believe the accused but indeed hoping, and hoping most strongly that during the weekend some doubt would arise in my mind, some nagging doubt, that would have entitled her to an acquittal. It is my

very great regret that that has not occurred. I do not refer to all the evidence and the many reflections in my mind upon that evidence. I am, in fact, entirely satisfied that when she put this money in her pocket, as I have found she did, she intended permanently to deprive the Company of it and I am satisfied beyond any reasonable doubt that she is guilty of the offence charged. I have no alternative but to return a verdict: of guilty.

FOR SENTENCE.

The offender has been found guilty of stealing as a servant of Steamships Trading Company Limited. The amount involved is small but in its circumstances the offence is one easy to commit and difficult to detect.

She was employed as a sales assistant at the cosmetics counter in the Company's main store, and having made the sale of a pair of sunglasses she pocketed the price, \$6.80, instead of paying it into the cash register and ringing it up. This is her first offence and most impressive witnesses have given evidence of her previous good character in Port Moresby. Nevertheless she stole and this was observed by one of three native employees in the cosmetics department. I have no doubt that this case is well known to many of the very many native employees of the Company. As I have said on other occasions, I believe it to be the duty of Europeans to set a good example to the native peoples, who more and more are taking over positions formerly held by Europeans only, particularly in positions of trust such as the offender held as a person entitled to receive money and entitled to open and pay money into and take money from the cash register. She has not only breached that trust reposed in her by her employer but did this within sight of a native employee, her colleague at the counter at the time. If a native employee were before me as a similar offender,

I have no doubt that I would impose a sentence of imprisonment, mainly, perhaps, as a deterrent. I do not feel that I can do less in this case, which must be known to many native employees of the Company. This, in my view, is but a special application of the element of deterrence in the imposition of punishment. There is also the general question of deterrence. I do not imagine that the offender is the first employee who has yielded to temptation of this kind or abused the position of trust in relation to the receipt of money and the cash register. The Courts should do what reasonably may be done to deter this sort of thing. The offender is not in the position of a person who, having erred from, for example, momentary temptation, makes a full confession with contrition.

There was not any need in her case to steal that might have created a temptation. She had a good position and money in her bank account. She has not only perjured herself, of course I do not punish her for this, but by her defence, has involved other native employees in suspicion, and indeed by her counsel suggested in cross-examination of the native female witness Mou Toea, whom I have found to be a witness of truth, that she, Mou, stole the \$6.80 from the cash register after the offender had, in effect, placed it there. I must mention, however, that she herself was so gracious as to say that she considered Mou to be an honest person.

I do take into account that a sentence of imprisonment would be for the offender a far greater punishment than it would be in the case of a native employee. However, notwithstanding that she is a woman and a first offender, I consider that the appropriate sentence is one of four weeks imprisonment without hard labour and that is the sentence I impose. These sittings commenced on the first day of the month.