

THE PUBLIC PROSECUTOR -v- CHERN CHIN HER

J U D G M E N T

The Accused in this Case Mr Chern Chin Her is a citizen of Taiwan and Master of a fishing vessel named the Hoang Man Chin. He is charged with using a foreign fishing vessel to fish in Vanuatu Waters without a valid foreign licence contrary to Section 4 (1) of the Fisheries Act No.37 of 1982 (hereafter called the Act). It is the Prosecutions contention that on Saturday 9th September, 1989, the Accused was engaged in fishing activity inside the Vanuatu economic exclusive zone.

Section 4 (1) of the Act states:

"No foreign fishing vessel shall be used for fishing or related activities in Vanuatu Waters except under authority of a valid foreign fishing licence issued by the Minister or an authorisation given under Section 10."

There are four essential elements of the offence and to succeed the Prosecution must prove each and every element beyond reasonable doubt.

These elements are:

1. A foreign fishing vessel.
2. Being used for fishing or related activities.
3. In Vanuatu Waters.
4. Without a valid licence or other ministerial authorisation under Section 10.

It was common ground between the Prosecution and the Accused that the Accused's boat the Hoang Man Chin was a foreign fishing vessel, that on the morning of Saturday 9th September, 1989, it was engaged in fishing and that it was not at the time in possession of a

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valid licence or other ministerial authorisation.

The main and indeed only issue was whether the Hoang Man Chin was inside Vanuatu's Waters or not.

"Vanuatu's Waters" are defined in Section I of the Act as meaning Waters of the economic exclusive zone, territorial sea, archipelagic Waters and internal Waters as defined in the Maritime Zones Act No.23 of 1981 to which the Court was referred. The Court was assisted in this respect by a map of Vanuatu (later produced by Lieutenant Commander - Christopher White and marked exhibit 6) which showed the extent of Vanuatu's Waters as so defined.

In simple terms Vanuatu Waters are all those Waters comprised inside the economic exclusive zone of Vanuatu. That zone is calculated and plotted according to internationally accepted and adopted formulae and was clearly marked on exhibit 6. This whole trial was concerned with whether or not the Accused's fishing boat was inside this zone or not at the time of apprehension.

Let us now look at the evidence before the Court. It is not necessary to go through the whole of the evidence in detail and I do not propose to do so. The salient points however are as follows:

The Prosecution evidence was that on the 9th September, 1989 the Vanuatu patrol boat the RVS Tukoro was engaged on a patrol round the islands of Vanuatu. Its' purpose was to check whether there were vessels fishing illegally inside Vanuatu Waters. On board, amongst others, were Inspector Tari Tamata, the Commander of the subsequent boarding party, Constable Jack Kawi a junior Seaman who was a member of that party, Inspector Noel Petri the Navigator of the Tukoro and Senior Inspector Bani Timbaki, Executive Officer and Acting Commanding Officer of the Tukoro on that trip.

The Court heard that the Tukoro was equipped with a very modern and sophisticated Satellite navigation system that was capable of producing at any one time a latitude and longitude reading of the Tukoro's position. This information is digitally displayed on a screen and, if the machine is so activated, also on a paper print out. Thus one can obtain a permanent record of the vessels' position at any one time. The Court heard how the vessels' position was ascertained by Satellite fixes which were precisely accurate and that in between Satellite fixes the position was produced by Computer

which calculated the position by reference to the last Satellite fix, the speed of the boat and course. The Court heard that it was impossible to corrupt the Satellite navigator so it gave a position that it did not calculate itself. The Satellite fix positions were plotted on the Tukoro's charts (exhibits 4 & 5) which clearly showed the Tukoro's course from the beginning of its patrol in Port Vila, northwards through the Torres group around Vanuatu in a clockwise direction and eventually back to Vila.

Inspector Petri, the Tukoro's navigator, told the Court that he first sighted the Hoang Man Chin at 00.44 hours on Saturday 9th September, 1989. This he recorded in the Tukoro's official ship's log. It was at that time 1.72 nautical miles away. At 01.48 hours he activated the print out facility of the Satellite navigator and at 01.55 hours a Satellite fix was obtained showing that the exact position of the Tukoro was Latitude 15 02.78 South Longitude 170 47.76 East, this position is 51 nautical miles inside the economic exclusive zone of Vanuatu. By this time the boarding party led by Inspector Tamata had boarded the Hoang Man Chin which was 0.14 nautical miles away (approximately 140 yards).

The Satellite navigator's print out was produced to the Court (exhibit 3) which clearly showed the Tukoro's position. In addition, the Tukoro's chart (exhibit 4) showed the plotted position at 01.55 hours and the Ship's log also confirmed this reading. Lieutenant Commander Christopher White later marked on this chart the economic exclusive zone, the position of which was accepted by the Accused. This showed that at 01.55 hours the Tukoro was well within Vanuatu waters.

Other documentary evidence to support the Prosecution came from the Accused's own navigation chart. Although partially obliterated, a plotted course from Santo travelling eastwards and ceasing well within the economic exclusive zone was shown. This was close to a submerged reef where, the Court heard, one can expect to catch fish. That in essence was the case for the Prosecution.

The accused curiously enough did not challenge the accuracy of the Tukoro's Satellite navigator although his case was that his position

when apprehended was outside the economic exclusive zone of Vanuatu. He maintained that his chart and ship's log conclusively proved that to be the case. I shall now examine his evidence:

Firstly it was clear to the Court that the Accused is a very experienced navigator. He spoke in some detail of his qualifications and career experience, the latter spanning some 16 years. The Accused maintained that because of his expertise and his knowledge of the whereabouts of Vanuatu's economic exclusive zone that he could not have been fishing inside Vanuatu Waters. This is not a logical deduction, his expertise and knowledge in no way prevents his being able if he so wanted, to fish in Vanuatu's Waters. Similarly he maintained that as he had left Santo 3 days prior to apprehension and had been travelling all of this time, that he must have been outside the economic exclusive zone. Again, whilst it is clear he had the time to travel to outside of the economic exclusive zone, it doesn't mean that he necessarily had.

The Accused maintained that his Satellite navigator was working at the time of the apprehension and that this showed his position to be outside the economic exclusive zone, but that this was missed by the Boarding Commander. This Court simply cannot accept that this was the position. It is totally inconceivable that if the Accused's Satellite navigator had been showing a position outside the economic exclusive zone that the Accused would not have drawn this fact to Inspector Tamata's attention.

The Accused produced his ship's log (exhibit 8) which gave reading of the Hoang Man Chin's position at various times on the 8 and 9 September. These positions are outside the economic exclusive zone. It does not however necessarily follow that these are an accurate reflection of the Hoang Man Chin's actual position. I do not find that the Accused satisfactorily established that these entries were made contemporaneously. If they were, as with the Satellite navigator, it is conceivable that he would not have shown them to the Boarding Officers.

As already mentioned the Accused's own navigation chart does not assist him in any way, rather the reverse.

Having boarded the Hoang Man Chin, Inspector Tamata asked the Accused to mark his position on his navigation chart. The Accused did so and this mark was signed by both himself and Inspector Tamata. The Accused contends that this means Inspector Tamata agreed with his position. It means nothing of the sort, it merely establishes that Inspector Tamata witnessed the marking of the chart.

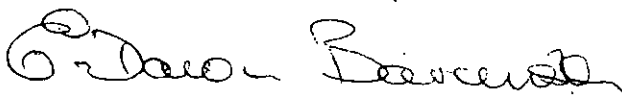
There was no evidence what so ever adduced by the Accused to show that the Tukoro's Satellite navigator was in any way defective.

In Conclusion:

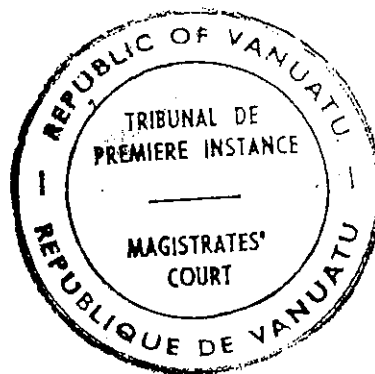
I found in this case that the evidence presented by the Prosecution, both oral and documentary, to be accurate, truthful and compelling. I did not find the evidence of the Accused at all satisfactory.

As in all criminal cases the burden of proof rests with the Prosecution. It must prove its case beyond all reasonable doubt. If there is a reasonable doubt the Accused is entitled to the benefit of that doubt and must be acquitted.

I find here that the Prosecution has proved its case beyond all reasonable doubt and I therefore find the Accused Mr Chern Chin Her to be guilty as charged.



E. Dawn Barcinski
SENIOR MAGISTRATE



Dated the 22nd day of September, 1989.