

PUBLIC PROSECUTOR -v- JEAN DENIS NOSES

JUDGEMENT

The two allegation arise from an incident which happened in the early hours of the morning of 29 November 1990. Substantially the facts are agreed. Mariana Obed (here in after referred to as the complainant) and the accused had prior to the incident been living together as man and wife, before she left him and moved to other accomodation without him. At around 2 a.m. the accused turned up, his behaviour affected by drink, at the complainant's house. His conduct then awoke the immediate neighbourhood. He left the scene in a taxi, returning in the same taxi very shortly thereafter having been told by the taxi driver that there was a man sleeping with the complainant. By this time the accused was distraught. On returning to the house, he found it open and unoccupied. Sitting on a bed and seeing an empty packet of cigarettes and a lighter, he set light to a piece of material which immediately began to burn. He threw this burning item outside the house.

He then took all the clothes and other personal items he could find out of the house and put them on the fire. At the same time he (admits) damaged 2 coffee tables, a stereo, the house's louvres and the glass window in the door.

The dispute arises over the amount of personal items damaged, and their value. Evidence of that comes from the complainant, and from the defendant. I have considered that evidence and have no difficulty in finding that the evidence of the complainant is sufficient to be relied upon. The defendant, and one must take into account his state of mind at the time of this incident can only say he does not know exactly what he damaged but that he does not agree he had damaged as much as the complainant says. It must be true that the complainant could not say on oath that her list of damaged items was entirely complete and accurate. I doubt anyone could ever do that, but I am satisfied that her evidence is of a sufficiently reliable nature to be relied upon beyond reasonable doubt.

As to the allegation under Section 143 an offence is committed when a " person enters or is in any house, building, tent, vessel or other place with intent to commit an offence therein" .

From the facts it is apparent that the accused was in the house and whilst in it formed the intent to commit the offence of arson. To that extent he must be convicted of this offence but shall be discharged absolutely thereof.

As to the offence of arson the accused is convicted of wilfully and unlawfully setting fire to 27 new T shirts, 4 new bed sheets, 6 new pillow cases, 4 wrap arounds (sulu), 4 pair of high heel shoes, 2 other pair of shoes, a Passport, a Driver's licence, 3 certificates and 5 references, 24 dresses, 4 old sheets, 3 photo albums, 1 pelum, 2 purses, a cheque book, 4 big beach towels, 3 small towels, 3 table cloths, 4 pairs of jeans, 2 New Caledonian island dresses, 2 pairs of thongs, 10 pairs of shorts, 25 pieces of underwear, 4 petticoats, 5 jumpers, 2 expensive pairs of earrings, 20 cheap earrings, 14 shirts, 40 music cassettes, 1 school bag, 1 laundry basket, 70 coat hangers, 1 photo frame, 1 swimming costume and 10 bras.

The conviction recorded against him is of malicious damage by fire of property to an unknown value, because of the difficulties of evidence earlier referred to. It is fair to point out however that conviction includes at least all of the items set out above.

There is no conviction recorded for damage to the 2 tables, the stereo set, or the glass which the accused admits he damaged. Clearly they were not damaged by fire as were the other items and as he was charged.

The claim for compensation by Mariana Obed is dealt with as a civil claim under Part XII of Cap. 136 (ss 213 - 217) The prosecution's view is that the articles damaged other than fire may be included in such claim. As the Defendant requests that all matters be considered together so that the whole incident could be dealt with by the Court. The Court has done that.

A Compensation Order is therefore made in the sum of 388,500vatu payable by the accused to Mariana Obed.

As to penalty, the Court takes into account that Compensation Order when ordering the accused to pay a fine of 20,000vatu. Were it not for the very substantial Compensation Order the amount of fine would have been much higher. The accused in addition is ordered to pay 10,000vatu towards the costs of the prosecution.

His offer to pay at 50,000vatu per month, beginning at the end of May 1991, is accepted.

Appeal rights explained.

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