

IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 1120 of 1976

THE REPUBLIC

vs.

PERRY KAPUA

CHARGE:

Common assault: C/S 335 of the Criminal Code Act 1899 of Queensland - The First Schedule.

JUDGMENT:

The case for the prosecution is that the accused unlawfully assaulted the complainant Lanza Dabana on the 29th of August, 1976.

It is in evidence that the complainant Dabana, who was riding a motorcycle, came out from the road leading to the N.P.C. Staff Club onto the main road and turned towards Nibok District and proceeded. When he was opposite the old post office he passed a police vehicle and noticed a policeman standing by it and as he passed he heard someone calling out to him.

The police officer who was standing by the vehicle was the accused. The complainant did not stop but kept going and when he was opposite the Japanese Construction Camp he heard a police siren behind him. When he was near the Power Station a police car came alongside and forced him off the road and he crashed on the side footpath. He fell down from the motorcycle and when he got up he saw the accused get down from the police car and come towards him. He asked the accused, "Why did you do that?" and the accused replied, "Why didn't you stop?" After saying that the accused hit him on the mouth with a clenched fist. In order to avoid more blows the complainant held on to the accused and to the wire fence. He kept on holding onto the accused till a police car came by and took him to the police station.

Police Constable Olson who arrived on the scene has stated that he first saw the accused and Dabana standing near the power station arguing and also noticed a motorcycle fallen on the side of the road. When he was taking the complainant to the police station the complainant told him that near the

old post office the accused called out to him and he did not stop. Near the power station the accused forced him off the road and fell off the motorcycle. The complainant also told him that the accused assaulted him and that he was hit on his face and after that they struggled.

The accused has given evidence and his version of the incident is the same as that of the complainant right up to the time that the accused stopped the complainant and forced the complainant off the road. He has stated that he stopped the car leaving enough room for the complainant to come to a halt. He, however, goes further and states that it was the complainant who hit him on the chest and that they struggled and the complainant forced him onto the fence. In the course of the struggle his uniform got torn and when the police car came the complainant was holding onto the front of his shirt. He asked Police Constable Olson to take him to the police station as the complainant assaulted him. The fact of the assault was included in his report.

On a careful scrutiny of the evidence given by the accused I find that there are many matters on which there is only the bare word of the accused. The evidence given by the accused that his uniform was torn cannot be accepted as the uniform is not an exhibit before the Court and if in fact the accused's statement is true, I see no reason why the prosecution has not produced his torn uniform as an exhibit. As regards the evidence of the accused that it was the complainant who assaulted him there is not only the complainant's version of the incident that it was the accused who assaulted him on the mouth, there is Constable Olson's evidence that when the complainant was taken to the police station he complained to him that the accused assaulted him. This statement to Constable Olson was made soon after the assault and in my opinion is good and sufficient corroboration of the assault. There is the further fact that when Constable Olson came on the scene the accused did not inform the constable that he wanted the complainant taken to the police station because of the fact that the complainant assaulted him. This is not an omission that an experienced police officer would make. Apart from this the most natural reaction on the part of the accused would have been to inform his fellow officer who came on the scene that he was assaulted by the complainant. His failure to do so makes me more inclined to accept the evidence of the complainant that it was the accused who assaulted him and I, therefore, reject the evidence of the accused that he was assaulted by the complainant.

The fact that the motorcycle was fallen is proved by the evidence of Constable Olson who had seen the fallen motorcycle. The evidence of the accused that he assumed that there was sufficient distance for the motorcycle to stop when he came to a halt in front of the motorcycle cannot be accepted. The accused should have taken proper precaution to bring his car to a halt in a manner that would not seriously affect the motorcyclist. It may or may not be as the complainant has stated, a question of being forced off the road. It may have been sheer carelessness on the part of the accused in bringing his police vehicle in front of the motorcycle in such a manner as to make the motorcyclist go off the road. I am not coming to a finding that it was a deliberate attempt on the part of the accused to force the complainant off the road.

Taking the entirety of the evidence into consideration I find that the prosecution has proved beyond all reasonable doubt that the accused did in fact assault the complainant on the day in question and I find the accused guilty and I convict him.

17th November, 1976.

R. L. DE SILVA  
Resident Magistrate