

IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 1087 of 1976

THE REPUBLIC

vs.

MORRIS DEMINGAUWE

CHARGE:

1. Driving a motor vehicle upon a Public Highway, which causes undue noise, by reason of the vehicle being in a state of disrepair; C/S 33(ii) of the Motor Traffic Act 1937-1973.
2. Driving unregistered motor cycle: C/S 17(1) of the Motor Traffic Act 1937-1973.
3. Using uninsured motor cycle: C/S 18(1)(a) of the Motor Vehicles (Third Party Insurance) Ordinance 1967-1972.
4. Driving while unlicensed: C/S 23(1) (a) of the Motor Traffic Act 1937-1973.

JUDGMENT:

The case for the prosecution is that the accused drove a motorcycle on the 26th August, 1976 whilst not being licensed to do so.

It is in evidence that the accused was seen driving a motorcycle by Sgt. Perry Kapua who stopped him and advised him that he would be booked for driving without a license. This witness has admitted that the accused was stopped because the motorcycle was not registered or insured and because it was making a noise.

The position taken up by the accused in his defence is that he was in jail for speeding and when he was released he asked Sgt. Perry Kapua whether he could take his motorcycle and he was told to do so. On the next day he went back to the police station and Constable Fritz told him that his driving licence was still valid. It was later that he was told that his driving licence was suspended.

Constable Paul Fritz in his evidence has not denied that the accused made inquiries about his driving licence. He had asked the accused to inquire from the Officer-in-Charge Sgt. Harris and he was not able to remember whether he told the accused that he could drive.

On an examination of the evidence led by the prosecution I find that the only evidence before the Court is that of Sgt. Kapua who has stated that the accused was driving without a licence.

It is not necessary for me to examine the evidence of the accused in coming to a finding whether he did or did not

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in fact inquire from Constable Fritz whether his driving licence was suspended or not for the reason that the prosecution has not placed before the Court sufficient evidence to prove that the accused was driving without a driving licence on the day in question. The burden of proving its case always lies with the prosecution. Apart from Sgt. Kapua's evidence that he advised the accused that he would be booked for driving without a licence, there is no other evidence to prove that the accused was without a current driving licence if that was the position; or if his driving licence had been suspended a certified copy of the Court order suspending the driving licence should have been tendered as evidence. In the absence of such proof the resulting position is that the prosecution has failed to discharge the burden of proving its case. I, therefore, find the accused not guilty and acquit him.

22nd November, 1976.

R. L. DE SILVA
Resident Magistrate