

IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 1131 of 1976

THE REPUBLIC

vs.

KEN ROLAND

CHARGE:

1. Driving a motor vehicle upon a public highway, at a speed exceeding thirty miles per hour, : C/S 28(a) of the Motor Traffic Act 1937-1973.
2. Driving a motor vehicle upon a Public Highway, dangerously: S 19(1) of the Motor Traffic Act 1937-1973.
3. Common Assault: C/S 335 of the Criminal Code Act 1899 of Queensland - The First Schedule.

JUDGMENT:

The charge of common assault was reconciled under section 123 of the Criminal Procedure Act 1972, on the complaint expressing his willingness to reconcile the matter and the accused tendering an apology to the witness.

As regards the charge of driving at a speed exceeding thirty miles per hour the prosecution has led the evidence of Andrian Notte and Arthur Tekarube, police officers who went to the scene of the incident. As regards speeding police officer Notte has stated in his evidence that he saw the accused getting into his car and reverse his car at a fast speed and driving onto the road and going in a southerly direction. He then made a U-turn and chased after the accused. According to him he had to drive at full throttle and he did about 50-60 miles per hour before he slowed down near the accused's house. Police officer Tekarube, however, states that the accused got into his car, made a turn and went away at a normal speed. They went after the accused and they were travelling at about 40-50 miles per hour. Const. Paul Fritz has stated that the accused reversed his car in a proper manner.

On an examination of the evidence as regards speeding I find that the evidence of Const. Notte is not corroborated by police officers Tekarube and Fritz. The only corroboration is that the police car was doing 50-60 miles per hour and there is no evidence on which the Court can act to come to a finding that the accused's speed was in excess of 30 miles per hour. In view of this I find the accused not guilty on Count 1.

As regards Count 2, there is the evidence of police officer Fritz who has stated that he saw a car coming towards the shack. It was zigzagging and he thought it was going to hit somebody. He saw the car hitting a chair. He has also stated that he saw someone going to the door of the accused's car and breaking the glass.

The accused has in his evidence admitted crashing his car onto a table because he did not want to race with the others. His position is that when he was drinking there was an argument about their respective cars and some of them challenged to race their cars. He did not want to go so. He then started his car and crashed onto the table. When he got out of the car somebody hit his car with a chair. Then he reversed his car onto the cliffside of the road. He heard someone saying that they will crash onto his car. It was at that time that he left and went home.

The version given by this accused has not been discredited in cross-examination. I, therefore, accept his evidence that the entire incident was a result of his friends' challenge to race his car with theirs. Although the evidence discloses that the accused did drive dangerously the circumstances are such that he was forced to do so in order to prevent a more serious incident. The evidence of zigzagging and crashing onto a table do amount to dangerous driving and I find the accused guilty on Count 2 and I convict him.

7th December, 1976

R. L. DE SILVA
Resident Magistrate