

IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 191 of 1976

THE REPUBLIC

v

BERNARD DEKARUBE

CHARGE:

1. Common Assault. Contrary to Section 335 of the Criminal Code Act 1899 of Queensland The First Schedule.

JUDGMENT:

The case for the prosecution is that the complainant Gregory Meredith was unlawfully assaulted by the accused in the early hours of the morning of the 9th of March, 1976.

The complainant Gregory Meredith, a visitor to the island, has given evidence regarding the alleged assault by the accused who is a police officer. According to him, when he was at John Willis' place having returned from a party earlier that night, the accused came with Kinza. The accused took his friend, another Samoan, inside the Police car. When he went to get the keys of John Willis' car, the accused came up to him, grabbed his hand and forcibly tried to pull him inside the Police car. He tried to explain to the accused but the accused refused to listen and he was dragged inside the car. From there they went to the place where they had a party earlier and Kinza got down.

According to the complainant, after Kinza got down the accused drove at a reckless speed on his way to the Police Station. At the Police Station the accused opened the door of the car with the Desk Sergeant. As he opened the door he (complainant) said, "Hey, boy, I am a black belt". The accused immediately grabbed his head and hit him on the face with a closed fist. The desk sergeant tried to stop him but the accused kept on hitting him. Eventually, he broke free and walked inside the Police Station. The accused came after him and assaulted him again inside the office. At that time he was bleeding from the nose and there was a cut on his lip. Whilst he was bleeding the accused kept on assaulting him and after everything was over the accused challenged him to go outside and fight. He also challenged his other Samoan friend to fight him.

This rather graphic description by the complainant of the alleged assault is, however, not corroborated by the two police officers who have given evidence. According to the complainant's evidence, the Desk Sergeant tried to stop the accused from assaulting him as soon as he got down from the police car but witness Clinton Benjamin, who was the desk sergeant on duty on the night in question, has not testified to any act of assault on the part of the accused. I see no reason to disbelieve him on this point. His evidence is that when the two Samoans were brought to the Police Station, the accused had reported to him that the complainant was aggressive. Witness Benjamin has also stated that the accused and the complainant were exchanging words. At one stage he saw the accused and the complainant holding each other. But it is not clear from the evidence as to who held whom first. At that stage he went up to them and advised the accused to go out of the Police Station and the complainant was asked to sit inside the room. He also did not notice anything unusual on the face of the complainant nor did he notice anything unusual about the accused. At the time the two Samoans were brought he was the only police officer inside the Police Station.

The evidence of the other police officer, Geoffrey Tannang, does not help the prosecution any further. His evidence is that he saw Constable Clinton Benjamin holding the accused inside the Police Station and he did not know the reason why it was done.

The prosecution has also led the evidence of Miss Mariea Slate at whose quarters the complainant and a few others had met for drinks earlier in the night. It did appear from her evidence that there was an incident at her place and she had to get Kinza Clodumar to contact the Police. Later, she went to the Police Station with Kinza Clodumar to make a statement and she saw the complainant and the other Samoan and several policemen. The complainant came to her and said that his nose was bleeding and that some policeman had punched him. At that time there were three policemen in the Police Station. It is significant to note that the complainant did not inform her as to who punched him. The evidence of the other prosecution witness, Leslie MacAlpine, also does not carry the prosecution case much further. She, too, refers to the incident earlier in the evening and when she ^{went} came to the Police Station she saw the complainant and the other Samoan and three or four police officers. She was there for about half an hour and during that time no one touched the complainant. Earlier in the evening there was a scuffle between the complainant and the other Samoan in the verandah of Miss Slate's quarters and one of the louvres was broken.

There are, however, certain points in the prosecution evidence which are purely of a circumstantial nature. For example, the fact that there was blood on the nostrils of the complainant and a cut on his face; and that the fact that Constable Tannang saw Constable Benjamin hold the accused.

As regards the blood on the nostrils and the cut on the face of the complainant, it is significant to note that it is in evidence that the complainant and his Samoan friend had a scuffle in the verandah of Miss Slate's quarters earlier in the evening and a louvre was broken. This kind of circumstantial evidence must be examined in the light of all the circumstances of the case and does not necessarily

point to an adverse inference against the accused and corroborate the complainant's version of the incident.

As regards Constable Tannang's evidence to the effect that he saw Constable Benjamin hold the accused and later was asked to escort him outside, there is evidence that the accused and the complainant had an exchange of words. This exchange of words may have alarmed Constable Benjamin and in order to avoid any trouble considering the fact that the accused was in an angry mood, he may have held the accused and asked Constable Tannang to take him outside. I would, therefore, hold that the circumstantial evidence is of such a nature that it does not constitute corroboration.

Apart from the complainant's evidence there is no other corroborative evidence of the alleged assault. A witness, Constable Benjamin, who, according to the complainant, should have seen the assault has not referred to it in his evidence. In view of this the complainant's evidence becomes tainted, and I am reluctant to act on such evidence; nor was I impressed by the demeanour of the complainant and I am inclined to take the view that his evidence is an exaggeration.

I accept the evidence given by Constable Benjamin and that of Constable Tannang.

On a careful consideration of the entirety of the prosecution evidence, I am of the opinion that it would be extremely unsafe to act on the uncorroborated evidence of the complainant. However, a strong suspicion does exist in my mind that some incident did occur; an incident which has not been revealed in the evidence. The Court cannot act on suspicion or embark on a voyage of discovery. It has to adjudicate on the evidence before it and the evidence in this case is of such a tenuous nature that I have no hesitation whatsoever in coming to a finding that the prosecution has failed to prove its case beyond all reasonable doubt, and I find the accused not guilty of the charge and acquit him.

7th April, 1976.

R. L. DE SILVA
Resident Magistrate