

IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 7 of 1977

THE REPUBLIC

VS.

CECILIO MADEJA

CHARGE:

Driving a motor vehicle upon a public highway, negligently: C/S 19(1) of the Motor Traffic Act, 1937-1973.

JUDGMENT:

The prosecution has led the evidence of two witnesses, namely Diema and Scotty who are alleged eye-witnesses to the incident on the day in question.

According to witness Diema, a motorcyclist overtook him opposite the Meneng Cemetery travelling at a speed of about 30 miles per hour. When he heard the engine slowing down he looked up and saw the crash.

Witness Scotty's evidence, however, is that the motorcyclist was travelling at about 45-50 miles per hour.

Neither of the prosecution witnesses have stated at what point of time the car driven by the accused emerged from the side on to the main road. Both witnesses have stated that the motor-cyclist overtook them opposite the Meneng Cemetery. Photograph 1 does not show as witness Diema has stated that the car was parked half-way on the main road. Photograph 2 clearly shows the rear wheels of the car within the marked area on the road, the front wheels about six or seven feet from the area where a motorist is expected to stop before getting on to the main road.

It is quite clear from the evidence that the car could be seen from the Cemetery which is at a distance of about 100 yards. The crucial question, therefore, is whether the accused exercised proper care and caution in proceeding beyond the marking, if he saw the motor-cyclist opposite the cemetery. I am of the opinion that the accused acted properly in proceeding beyond the marking if the motor-cyclist was opposite the cemetery.

The evidence as to the position of the car, when the motor-cyclist was opposite the cemetery is very unsatisfactory. Witness Scotty's evidence that a car was coming out from the Government Settlement with its right blinker on is not very helpful as there is no indication of the position of the motor-cyclist at that point of time. He merely goes on to say that the motor-cyclist overtook them opposite the cemetery. Even if he had stated that at that point of time the car was coming on to the main road, negligence could not be attributed to the accused, as the distance was of such a nature that the car could have safely got on to the main road. The evidence that the car was stationary with its blinkers on is suggestive of the fact that the accused, when faced with a sudden emergency, applied his brakes and brought his car to a complete halt.

Photograph 2 clearly shows that there was ample room for the motor-cyclist to pass the stationary vehicle. The fact that the motor-cyclist hit the rear of the car, when there was sufficient space in front of the car, indicates in no uncertain manner that the motor-cyclist could not control his motorcycle.

I have no doubt in my mind that the proximate cause of the collision was due to the negligence of the motor-cyclist.

The prosecution has failed to place before this Court any evidence to show that there was any negligence on the part of the accused and I, therefore, hold the accused not guilty of the charge and acquit him.

R. L. DE SILVA
Resident Magistrate

1/11 FEBRUARY, 1977