IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 31 of 1977

THE REPUBLIC

vs.

RENE HARRIS

CHARGE:

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

2. 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 accused unlawfully assaulted Garry Seaborne and his child Velsha Seaborne on the 14th of August, 1976.

In dealing with Count 1, the alleged assault on Garry Seaborne, I will first examine the evidence regarding the alleged signal on the bridge which, according to the defence, triggered off a sequence of events on the day in question.

Witness Seaborne has denied making a signal at the accused. On this point he is supported by his wife Veronica. On the other hand the accused has stated that when his car was passing Seaborne's car travelling in the opposite direction, he saw Seaborne making a sign with his thumb - an upward motion of the thumb followed by a downward motion. His wife corroborates him on this point.

According to the accused he turned his car and went after Seaborne and on the way picked up Pallek near the Civic Centre. The first confrontation between the accused and Seaborne occured half-way between the wind-sock on the northern end of the air-strip and the Works Department. When Seaborne was about to make the turn to his mother-in-law's home, he noticed a car very close behind him. He did not turn as he thoughtthere would be an accident. The car then drove up alongside him, and the accused who was the driver accused him of giving him the thumbs down sign. He

denied having done so. When the accused got down from his car he drove off in the direction of the police station followed very closely by the accused - so closely that he could not see the front of the accused's car from his rear vision mirror.

The accused made the same accusation in the fore-court of the police station where the cars eventually came to a halt. The accusation was again denied. At this stage it is interesting to note the type of questions the accused asked Seaborne regarding the alleged signal.

The accused has stated that he asked Seaborne, "Were you making a signal?" There is an element of doubt in a question of this type. If there was no doubt in the mind of the person asking the question, the question would be "Why did you make a signal?" At the police station, the accused asked Seaborne "whether he had signalled him". Here, too, there is an element of doubt. According to Mrs. Harris the accused asked Seaborne, "What was the signal you made?" Here the question takes a different turn and clearly reveals that the accused was not sure what the signal was, if any signal was ever made.

This signal - the thumbs up and thumbs down sign - appears to be a very rude and inflammatory gesture to the Nauruan mind. Rev. Amram, who was called by the defence as an expert witness in respect of the behaviour patterns of the Nauruan people, is one who is eminently qualified to do so. I accept his evidence as to the reactions of a Nauruan to such a signal without any reservations whatsoever. Rev. Amram has stated that if this signal was made to a Nauruan in the presence of his wife, it would aggravate matters, for it would be a loss of face to the man. So that there is no doubt in my mind that every self-respecting Nauruan who is the victim of such a signal in the presence of his wife would react very badly.

At this stage it is necessary to examine the conduct of the accused after the alleged signal was made at him. There is his evidence and that of his wife, that he turned his car round and pursued Seaborne. I have earlier referred to the element of doubt in the questions put by the accused to Seaborne. What is significant to note is the reaction of the accused when he was in front of the police station. Having asked Seaborne "whether he had signalled him", the accused drops the accusation and switches on to another matter and

questions Seaborne as to what he had stated at the Foot-ball League meeting a week earlier. The matter of this signal - a signal so rude and so inflammatory to a Nauruan mind, fades into insignificance and Seaborne's statement about the accused at the league meeting emerges to the front. Is this the normal conduct of a Nauruan who had been subject to this signal in the presence of his wife? Would a Nauruan placed in the position of the accused have so lightly abandoned such an accusation after pursuing Seaborne in an agitated state of mind for nearly 1½ miles if in fact such a signal was ever made? I am of the opinion that the answers to these questions lie in one fact and one fact alone namely, that a signal was never made by Seaborne; and I have come to the irresistible conclusion that the accused fabricated this story of the signal as an excuse to start some form of trouble with Seaborne that day. It must not be forgotten that from the time Seaborne called the accused a coward at the Foot-ball League meeting, the accused was very upset. I, therefore, accept the evidence of Seaborne and his wife on this point. I was more than impressed by the demeanour of these two witnesses: I reject the evidence of the accused and his wife that Seaborne made a signal at them on the bridge.

Before I proceed further, I will deal with the submission made by learned Counsel on this point. He submitted that something happened on the bridge and posed the question as to why the passing of Seaborne's car should trigger off a sequence of events. He has also submitted that the accused had ample opportunity to take revenge earlier.

The reason for the accused to suddenly turn his car and pursue Seaborne is best known to the accused. A very significant fact, however, is that this was done shortly after the 2nd semi-final match was over that evening. The fact that the accused had ample opportunity to take revenge earlier is of no significance.

I will now deal with the evidence that led to the assault. It is in evidence that both Seaborne and the accused got down from their cars and approached each other. They met between the two cars. The accused asked Seaborne whether he made any signals and why. Seaborne denied the accusation. The accused then asked Seaborne why he made some bad remarks at the League meeting.

According to Seaborne he called the accused a coward and went on to explain why he referred to

him as a coward, and it was soon after the explanation that the accused hit him on the face. The position taken up by the accused is that the moment he was called a coward, he instinctively hit Seaborne. I accept the evidence of Seaborne that he was hit by the accused after his explanation and I reject the evidence of the accused on this point.

The defence is one of provocation. Provocation in law consists mainly of three elements: the act of provocation, the loss of self-control, both actual and reasonable, and the retaliation proportionate to the provocation.

I have addressed my mind to the following facts namely, whether the use of the word "coward" by Seaborne made the accused lose his self-control and cease to be master of himself; whether the provocation, if any, not only did in fact cause the accused to lose his self-control, but also was of such a nature that it would cause a reasonable person to lose his self-control in the same way; and whether the mode of resentment bears a reasonable relationship to the provocation caused.

It is in evidence that the accused was fully aware that Seaborne had called him a coward a week earlier at a meeting of the Foot-ball League. So that, when Seaborne called him a coward in answer to a question as to what he had stated earlier, it would not have come as a rude shock. This is not a situation where a person suddenly calls another a coward. It was the accused who invited the utterance of the word "coward", and having done so he cannot plead provocation. The law is very clear on this point for it states that the act or insult relied on as provocation must not have been incited by the accused for the purpose of affording an excuse for the assault. Even if there was provocation, the nature of the provocation was such that it would not cause a reasonable person to lose his self-control in the same way and the mode of resentment and the force used was clearly disproportionate to the provocation.

Learned Counsel for the defence has submitted that if Seaborne had not called the accused "a coward" there would not have been an assault. I am in entire agreement with this submission but on the same reasoning it can be said that if the accused had not questioned Seaborne as to what he had said at the League meeting, he would not have been called a coward.

For these reasons, the defence of provocation must necessarily fail. It is not necessary for me to refer to the case of Parker vs. The Queen and R. vs.' Abraham cited by learned Counsel for the defence in view of my finding as regards provocation and that Seaborne did not make a signal.

I, therefore, hold that the prosecution has proved beyond all reasonable doubt the ingredients necessary to constitute an act of common assault and I find the accused guilty on Count 1 and convict him.

I will now deal with the evidence as regards Count 2.

The fact that the accused took the child from Seaborne's car is not disputed. The accused has admitted doing so and has given reasons for his action. These reasons have to be carefully examined in order to come to a finding whether the act of the accused in taking the child out of the car constituted an act of common assault.

The prosecution has led the evidence of a number of witnesses who saw the act of the accused.

Witness Seaborne, the father of the child, has stated that the accused called out "Garry, is this your daughter?" and held the child in front of him. According to the mother of the child, Veronica Seaborne, the accused called out, "Garry, is this your child? See what I am going to do with the child." Witness John Olson has stated that the accused took the child in his hands and shouted "Watch out." Saying so, the accused lifted the child in front of him and made a motion of throwing it down on the ground. Witness Hemming has stated that the accused held the child above his head and shook her.

As against this evidence there is the evidence of the accused who has stated that when he was going towards his car he heard a child cry in the rear of Seaborne's car. He went to the car and lifted the child by the armpits and took her out through the window. He then called out, "Garry, is this your child?" and Garry replied, "Dont't touch my baby." The accused has denied that he pretended to drop the child or that he shook her. The wife of the accused was busy at this point of time as she was engaged in a verbal duel of her own with Seaborne's wife, and she did not see the accused assault Seaborne, or take the child from the car. However, she did

manage to hear something about the child, for she has stated in her evidence that she heard her husband call out, "You wouldn't be leaving your baby behind. She is crying."

The evidence of the wife of the accused, as to what the accused said regarding the child is in direct conflict with what the accused is alleged to have said. It would be unrealistic to expect witnesses to an incident of this type to state the exact words. But, in addressing my mind to the words uttered as testified to both by the prosecution witnesses and the defence, I find that there is ample corroboration of Mrs. Seaborne's evidence, in the evidence of witness Olson. The evidence of these two witnesses which I accept makes it more than abundantly clear that the accused took the child out of the car without the consent of the parents and handled the child in such a manner that it would have caused the parents to apprehend immediate and unlawful violence. Witness Olson's evidence that Mrs. Seaborne was crying and hysterical when she got the child subsequently is indicative of the manner in which the child was handled and the mother's reaction to what the accused did. The discrepancies in the evidence of the prosecution witnesses are not material and do not in any way taint the prosecution version of the incident.

Learned Counsel for the defence submitted that the accused had an opportunity of throwing the child down; that there was no aggressive act towards the child; that a good samaritan act should not be considered otherwise and that the accused had no intention of harming the child. I have given these submissions the most careful consideration.

Intention which is a state of mind can never be proved as a fact; it can only be inferred from facts which have been proved. Therefore, the act of the accused in taking the child out of the car must be examined in the light of the circumstances in which it was done in order to ascertain what his intention was. It is in evidence that shortly before the accused took the child he assaulted the father who then went towards the police station after informing the accused that he was going to charge him for assault. The evidence that I have examined earlier clearly indicates the intention of the accused and it cannot be said by any stretch of imagination that the accused played the part of a good samaritan. It would be most unnatural conduct on the part of the accused, placed in the position he was, to suddenly shed his aggressiveness, regain his composure and

put on the cloak of a good samaritan. The hostile intent is the act of the accused in threatening to throw down the child. The fact that he did not do so is of no consequence.

I am, therefore, satisfied on the evidence placed before this Court that the act of the accused in taking the child out of the car was accompanied by hostile intent calculated to cause apprehension in the minds of the parents, and therefore, constituted an act of common assault.

I hold that the prosecution has proved Count 2 beyond all reasonable doubt and I find the accused guilty on Count 2 and convict him.

R. L. DE SILVA
Resident Magistrate

21st February, 1977.