

IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 705 of 1977

THE REPUBLIC

v.

JARED HEINRICH and TELSON AGIR

CHARGE:

1. Assaulting a Police Officer: C/S 340(2) C.C.A. 1899 of Queensland, 1st Schedule.
2. Consuming liquor when under the age of 21 years: C/S 33(5) of the Liquor Ordinance 1967.

JUDGMENT:

The case for the prosecution is that the two accused assaulted Police Constable Andrew Heinrich on the 3rd of December, 1977 when he and another police officer went to a spot near the old post office to ask a group of people drinking there to leave the place.

According to Police Const. Heinrich, when he went to the spot, he saw a group of people drinking intoxicating liquor seated on a concrete wall by the side of the road. Apart from the two accused, there were others in the crowd. He saw accused Telson with a can of beer by his side. He approached them and asked them to leave the place as they were drinking on unlicensed premises. He spoke to Valerie Bernicke, who was seated on the concrete wall and told her to ask her friends to leave the place. When he was talking with her, he suddenly felt a punch on the back of his head and when he turned around, he saw accused Jared by his side. There was no one else close to him. He then approached Jared and informed him that he was arresting him for assault. He held him and tried to put him in the police car because he refused to be arrested. Then the other accused Telson came and punched him in order to free Jared. At that stage, he fell down on the ground with both accused on top of him.

Not long afterwards, Const. Grundler, who accompanied him and who was in the car all this time came out and tried to separate the accused from him. He separated them and he asked Const. Grundler to put them in the police car. At that stage, accused Jared ran towards him again and they exchanged punches. Accused Telson also jumped on him and a struggle took place again. Later, a District Constable came along and helped them to put the two accused into the car. During the struggle, 3 or 4 buttons were ripped off his shirt and whilst they were taking the two accused to the police station, he got the smell of strong liquor from the breath of both accused.

In cross-examination by the first accused, the witness denied that he hit a girl.

The prosecution evidence up to this stage appeared very convincing indeed but the moment the next prosecution witness, Police Const. August Grundler, got into the witness box, the entire prosecution case began to crumble slowly but surely. Const. Grundler, apart from not being able to remember important facts of the incident, has a hazy idea of what happened and has given a completely different version of the incident and does not corroborate the evidence of Const. Andrew Heinrich on any one material point.


According to Const. Grundler, the first act of violence at the scene was committed by Const. Heinrich, who pushed Valerie Bernicke off the wall. He saw this incident seated inside the police car which was only ten feet away. Now, this has been specifically denied by Const. Heinrich when he was cross-examined by the first accused. It was when Valerie and Const. Heinrich were struggling with each other that the two accused went to the struggling couple probably to rescue their friend. Now this evidence, too, is in direct conflict with the evidence of Const. Heinrich who has stated in his evidence that when he was talking with Valerie, he felt a punch and it was only Jared who was close to him.

According to this witness, punches were thrown and he was unable to see who assaulted whom first. He did not see who threw the first punch and he was not sure what the accused did. When the two accused went to the rescue of Valerie, she escaped and the police officer and the two accused were struggling. In fact, he is unable to say who the aggressor was. At one state, however, the two accused and Const. Heinrich were exchanging punches. They had to struggle with the two accused to put them inside the police car. It is significant to note that this witness does not mention the District Constable at all.

Therefore, I have come to the irresistible conclusion that although there is strong evidence of a brawl between the police officer and the accused, there is absolutely no evidence to come to a finding that police officer Andrew Heinrich was assaulted by these two accused whilst acting in the execution of his duties. It would be extremely unsafe to act on the uncorroborated evidence of Police Cost. Heinrich as I am strongly inclined to take the view that he has not stated in Court as to what really happened on the day in question. I, therefore, find both accused not guilty on Count 1 and I acquit them.

As regards Count 2, there is evidence of both police officers that they got a strong smell of intoxicating liquor both during the struggle and whilst the accused were in the police car.

Accused Jared Heinrich has given evidence that he did not consume any liquor that day. As against the police evidence I am unable to accept his evidence and I hold that the prosecution has proved beyond all reasonable doubt that both accused had consumed intoxicating liquor at the time the police went to the spot.

  
R. L. DE SILVA  
Resident Magistrate

5th January. 1978