

IN THE SUPREME COURT OF NAURU  
(APPELLATE JURISDICTION)

A Certified True  
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Original  
B.L. CHOPPA  
REGISTRAR, SUPREME COURT

CRIMINAL APPEAL NO. 8/98

BETWEEN :      **JOHN MEIYOUWA TSIODE**

APPELLANT

AND            :      **DIRECTOR OF PUBLIC PROSECUTIONS**

RESPONDENT

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**DECISION ON APPEAL BY DONNE, C.J.**

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This appeal must succeed on the grounds that the complainant neither gave evidence at the trial nor was any statement by her presented thereat under the authority of section 146 of the Criminal Procedure Act, 1972.

No person can be tried for a crime he denies without the opportunity being given to him to test the truth of his accuser's complaint. This is usually given at the trial where the complainant is called to give evidence. This also allows the Court to witness the complainant's demeanour. Credibility is involved. However, there are occasions when the complainant is unable to be present to give evidence. Section 146 contemplates that situation and provides for the admission at the trial of the complainant's statement subject to the satisfaction of certain conditions being complied with. There is, of course, provision for the taking of evidence of a witness before trial.

There was no witness at the trial who saw the alleged assaults. Here, surprisingly, the prosecution neglected to meet the situation here arising. In the result, the trial had to proceed without the complainant being heard either

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by "viva voce" evidence or by the presentation of a written statement by her on the authority of the said section.

No accused person can be tried for a crime without his accuser's complaint being presented at his trial in the manner prescribed by law. Mr. Flora was unable to support a contention to the contrary by any legal authority. Indeed, of course, he could not as no such authority exists.

In short, the only witness of the assault and the perpetrator was the complainant. There is no other admissible evidence thereon. The complainant's evidence is not before the Court either by way of "viva voce" evidence or admissible statement.

The appeal is allowed. The conviction is quashed.



CHIEF JUSTICE

25/2/99