

IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 470 of 1976'

THE REPUBLIC

vs.

ALFRED BIRBIRINANG DICK

CHARGE:

1. Common Assault. C/S. 335 of the Criminal Code of Queensland (adopted).

JUDGMENT:

The case for the prosecution is that the accused unlawfully assaulted the complainant Dagabo Scotty on the 27th April, 1976.

The complainant Scotty has, in his evidence, stated that in the early hours of the morning of the 27th April, 1976 at about 1.00 a.m., he was in his house sitting all by himself when the accused came and spoke to him in an angry manner. The accused asked him as to why he had reported him to the Police and what he will get out of it. The accused also told him that he wanted to spoil his reputation.

When he answered that he would report anybody who assaults him the accused suddenly stepped forward and smacked him on the face with his bare hands about 5 or 6 times and walked away. After the accused left he went to Basil Hiram's place and informed the Police.

The accused in his evidence has denied assaulting the complainant. He has, however, admitted that he went to Scotty's house accompanied by Mrs. Briar Reweru. According to him, the complainant Scotty was sleeping and he woke him up and spoke to him. He told the complainant that he has made complaints against him but he (the complainant) had not told the full story of the incident. He also told him that if anybody were to make complaints it would be the people around about because he was abusing people when he was drunk. He spent about 5 minutes with the complainant and left. Then he and Mrs. Reweru went to the main building. Later Const. Dageago came in a police car and told him that Scotty had made a complaint of assault.

The defence has led the evidence of Mrs. Reweru, who has stated that she was with the accused when he was speaking to her father Scotty and that the accused did not slap him. Her position is that the complainant is making false allegations against the accused because he does not like her staying in the main house.

Mr. Kun has submitted that the accused and Mrs. Reweru corroborate each other and Mrs. Reweru has given reasons for her father's false allegations against the accused and that the complainant has given false evidence in this Court.

I have examined the evidence of the accused and Mrs. Reweru very carefully. There is corroboration as regards the incident but in the face of the evidence given by the complainant, whose evidence was not discredited by the defence, I am inclined to take the view that the complainant Scotty, whose demeanour impressed me very favorably, was a witness of truth and that he has stated in Court exactly what happened that night.

If Mrs. Reweru's reason for the false allegations is true the most natural reaction on the part of the complainant would have been to make false allegations against her and not the accused or take some positive action to get her out of the house. Therefore, the reason given by Mrs. Reweru for the false allegations against the accused can hardly be accepted.

There is another aspect of the defence evidence which needs to be considered. The accused in his evidence stated in detail what he told the complainant. But according to Mrs. Reweru what the accused told the complainant is not exactly the same. Her version is different. Although it would be unrealistic to expect the accused and Mrs. Reweru to give the identical words spoken, assuming that Mrs. Reweru was with the accused, still the nature of the words uttered is not without significance. If the accused did in fact, as alleged by Mrs. Reweru, told the complainant Scotty not to be a nuisance at night and that if he continued in that manner he would make a complaint to the Police; he would not have forgotten to mention it in his evidence. Indeed, these words would have been foremost in his mind.

Therefore, I am inclined to take the view that Mrs. Reweru, for reasons best known to herself, has not given a true account of the incident and was only a convenient witness for the defence. I see no reason to accept the tainted evidence put forward by the defence in preference to the evidence of complainant Scotty. I, therefore, reject the evidence of Mrs. Reweru and that of the accused as being unworthy of credit.

I, therefore, hold that the prosecution has proved its case beyond all reasonable doubt and I find the accused guilty and convict him.

12th July, 1976.

R. L. DE SILVA
Resident Magistrate