

IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 111 of 1976

THE REPUBLIC

vs

ASPELOK SATTO

CHARGE:

1. Malicious Damage to Property. Contrary to Section 469 of the Criminal Code Act 1899 of Queensland - The First Schedule.
2. Offensive Behaviour in a public place. Contrary to Section 5(a) of the Police Offences Ordinance 1967.

JUDGMENT

The case for the prosecution is that the accused on the early hours of the morning of the 3rd February, 1976 caused malicious damage to the property of Maina Deang by driving his car into his loudspeakers and amplifier.

The evidence reveals that there was a loudspeaker competition between two groups. There were four speakers on one table and an amplifier on another. The accused who was in a state of intoxication got into his car and drove it onto the loudspeakers and amplifier and also injured a person called Peter who was standing in front of the loudspeakers.

All three witnesses for the prosecution have testified to the fact that they saw the accused drive his car onto the loudspeakers and the amplifier.

The complainant's evidence that the accused drove his car onto the loudspeakers and the amplifier is amply corroborated by witnesses Moffet and Inspector Daniels, who happened to pass the place of incident at that particular time. Moffet's evidence is that the accused, who was in a state of intoxication, shouted some obscene words, got into his car and drove it towards the loudspeakers and amplifier and crushed into them. When the accused was reversing the car, the Acting Director of Police came on the scene and removed the accused.

Inspector Daniels, the Acting Director of Police, corroborated Moffet's evidence. He stated that he saw a car being driven into the loudspeakers and amplifier and he went to the spot and removed the accused from his car. He has also stated that he noticed some boys damaging the car of the accused but at that particular time he was more interested in seeing that the accused did-not come to any harm than trying to save his property.

As regards damaging property, apart from the evidence of the complainant Maina Deang and witness Moffet,

there is the independent evidence of Inspector Daniels who saw the accused drive his car into the loudspeakers and amplifier.

Mr. Aroi, for the defence, submitted -

- (a) that the prosecution has not proved how and why the accused ran into the loudspeakers;
- (b) that there is no evidence that the accused accidentally upset the loudspeakers; and
- (c) that the prosecution has not proved malicious intent on the part of the accused.

As regards submission (a), there is no burden cast on the prosecution to place before the Court any evidence as to how and why the accused crashed into the loudspeakers. They have discharged the burden by adducing evidence of three eye-witnesses who have testified to the fact that the accused crashed into the loudspeakers.

As regards submission (b), the burden rests squarely on the defence to place evidence before the Court that the crash occurred accidentally. There is no such evidence. Now has it been elicited in cross-examination. The accused has not given evidence or called witnesses in his defence and it is he and he alone who could testify as to whether the crash occurred accidentally or not.

As regards submission (c), the word "malice" means no more than that the accused did the act in question voluntarily (that it is not accidentally) and knowing what he was doing. 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. The word "wilfully" as used in the section means "intending to do injury".

On an examination of the evidence the only logical conclusion that can be arrived at is that the accused intended to damage the loudspeakers and the amplifier when he drove his car into them. Therefore, Mr. Aroi's submissions must necessarily fail on count 1.

On count, 2, that is the charge of offensive behaviour, Mr. Aroi has submitted that there is no evidence that the obscene words were directed at any person and that any person was offended by them. On an examination of the evidence, I find that the only witness who has testified to the uttering of obscene words is witness Moffet and he stated that the accused started shouting obscene words. There is no evidence as to what these obscene words are and certainly no evidence that it offended anyone. The mere uttering of obscene words would not tantamount to offensive behaviour. The accused should have been charged for using obscene language, in or within the hearing or view of any person in a public place. I, therefore, find the accused not guilty on count 2 and acquit him of the charge.

I hold that the prosecution has proved beyond reasonable doubt that the accused, on the morning in question, did cause malicious damage to the loudspeakers and

the amplifier which were the property of the complainant Maina Deang. I, therefore, find the accused guilty on count 1 and I convict him.

8th March, 1976

R. L. DE SILVA
Resident Magistrate