IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 95 of 1976

THE REPUBLIC

vs

JAMES DUBWET CANNON

CHARGE:

1. Offensive behaviour in a public place. Contrary to Section 5(a) of the Police Offences Ordinance 1967.

2. Using obscene language. Contrary to Section (5(a) of the Police Offences Ordinance 1967.

3. Common assault. Contrary to Section 335 of the Criminal Code Act, 1899 of Queensland - The First Schedule.

4. Consuming intoxicating liquor while under the age of 21 years. Contrary to Section 33(5) of the Liquor Ordinance, 1967.

JUDGMENT

The prosecution has led the evidence of Sgt. Makinin Iga and Labi Harris as to the incident that occurred at the Gabab Channel on the 31st January, 1976, at about 8:45 a.m.

According to the evidence given by these two witnesses, they were the Judges in a fishing competiton. Sgt. Makinin stated in his evidence that when the first boat came back to the Channel he walked down to the boat and took out two fish to weigh. The accused walked up to him and asked for fish. He then told him to go down to the fishermen and ask them for fish. He took one fish and put it in his car and the other he gave Labi Harris. At this stage the accused started to argue with him for not giving him fish.

When the second boat came back, he took out a couple of big fish to weigh and he then called out to Eriu Temaki to take the fish. When Temaki was taking the fish he saw the accused follow him to the hut. He then walked to the hut to weigh the big fish. After that he told Temaki to take one fish to his car and the other to Labi's car. At this stage the accused came up to him and started blaming him for not giving him fish. The accused was talking in a loud voice and in an aggry manner and was intoxicated. He asked the accused to leave or else he would get into trouble. At that time a big crowd had gathered around to see what was happening. The accused approached hkm in a threatening manner and he pushed him because he though he was going to attack him. The accused then turned back and started punching him and whilst he was doing so, he was trying to defend himself. He got a punch in his left eye and blood started flowing. The accused kept punching him and told him "You and Labi are my enemies" followed by obscene words. After that the accused made an obscene gesture with his hands which he regarded as insulting.

He called out for somebody to get the Police but no one responded although there were about fifty people. He then told the accused to leave otherwise he would be arrested, for which the accused replied "GEt the Police and also get your boss". Then the accused turned back and pulled him by the shirt and he fell down. When he got up the accused started punching him again. This time he got punched on the nose. Later, Humprey Theum grabbed the accused. The accused did not go but approached Labi Harris and grabbed him by the shirt. Hjmprey grabbed him again and the accused was pusyed away. A little later Ronald Admim put the accused in a landrover and drove away. After that he went to the Police Station and reported the incident.

Witness Labi Harris has stated in his evidence that he did not know who threw the first punch. It all started with an argument which developed into a fight. According to him there was a free-fpr-all between Sgt. Makinin and the accused. He further stated that the accused was justified in protesting about the judges' taking the big fish and leaving the small fish. The accused appeared to be under the influence and he used swear words (Exh. B). He made an attempt to stop the fight but he did not want to get punched and so he left them alone.

The accused has given evidence and has admitted drinking beer the previous ngght. He stated he criticized Sgt. Makinin because he took the big fish and the public got the small fish. When he spoke to him, he was told to get fish from the next boat and when he went down to the boat, there were only small fish. He then went up to Sgt. Makinin and was pushed by him. They they fought. He did not threaten Sgt. Makinin and he was pushed becuase he criticized him for taking the big fish. The accused has also admitted that he used swear words.

The accused is facing four charges and I would deal first with the most serious ofjathe charges, that is the charge of common assault. The evidence clearly reveals thatthere was a fight between Sgt. Makinin and the accused. This is evidence of prosecution witness Harris that there was a free-for-all. Sgt. Makinin's evidence gives the impression that the accused attached him and he defended himself. On this point, therefore, there is a conflict in the evidence of the two prosecution witnesses but the fact remains that Sgt. Makinin pushed the accused becuase he approached him in a threatening manner and as he feared that he would be attached. The accused retaliated by turning around and punching him. I see no reason to disbelieve Sgt. Makinin on this point and I am of the opinion that he was justified in pushing the accused in these circumstances. Sgt. Makinin's act pf pushing the accused, in my opinion, was a defensive act rather than an offensive one. It could well be that in the free-for-all as described by witness Harris, Sgt. Makinin was defending himself and trading punches with the accused. I, therefore, hold that the accused did unlawfully assault Sgt. Makinin and find him guilty on Count 3 and convict him on the said Count.

As regards Count 1, which is the charge of offensive behaviour in a public place, the evidence discloses more than mere criticism of the judges by the accused. The use of swear words; the persistent demands for fish; the

refusal to go away; and the obscene gestures made at Sgt. Makinin are in my opinion acts which when taken together would be sufficient to constitute offensive behaviour within the meaning of Section 5(a) of the Police Offences Ordinance 1967.

As regards Count 2, that is the charge of using obscene language, there is the evidence of Sgt. Makinin and Labi Harris as tosthe words used (Exh. A abd Exh. B). There is also the evidence of the accused himself that he used swear words. According to Section 5 of the Police Offences Ordinance 1967, it is not necessary for the obscene words to be directed at any particular person. It is sufficient if the prosecution satisfies the Court that the accused uttered obscene language. Although there is a difference in the words as written down by the witnesses in Exh. A and Exh. B, the fact remains that these words were obscene.

I, therefore, hold that the prosecution has proved Count 2 beyond all reasonable doubt and I convict the accused on the said Count.

As regards Count 4, Mr. Aroi has submitted that the prosecution must prove the necessary ingredients of 1the offence namely, that the accused did on or about the 31st January, 1976, consume intoxicating liquor at Gabab Channel. Mr. Aroi has further submitted that there is no evidence placed before the Court by the prosecution that on the morning in question, -the accused consumed intoxicating liquor. He invited the Court to accept the evidence of the accused that he drank beer on the night of the 30th January.

It would be unrealistic for the Court to expect in cases where a person under the age of 21 has been charged for consuming intoxicating liquor, for the prosecution to lead evidence of the very act of consuming intoxicating liquor. In mu view, it would be sufficient, once a Court is satisfied that the accused had taken intoxicating liquor, if there is some evidence from which the inference could be safely drawn that the accused at the relevant time was consuming liquor. This evidence could be circumstantial such as being in a group of people who are drinking or having in his possession some kind of liquor. But in this case, none of the prosecution witnesses testified to the fact that there was any liquor anywhere near the Gabab Channel; or that any person other than the accused was found drinking or that the accused had in his possession any cans of beer or liquor. The only evidence that the prosecution has placed before this Court is that the accused was in a state of intoxication.

Therefore, in the absence of any circumstantial evidence from which the Court can safely come to the conclusion that the accused had consumed intoxicating liqour on the morning in question, Mr. Aroi's submission that the prosecution has failed to prove the charge iseentitled to succeed.

The evidence of the accused that he consumed beer on the 30th has not been discredited in cross-examination. I see no reason to reject his evidence onhis point. His state of intoxication could well be the after effects of his drinking on the 30th. In view of this a serious doubt arises in my mind as to whether the accused did or did not drink on or

about the 31st January, and I give the benefit of the doubt to the accused and I find him not guilty on Count 4.

9th March, 1976.

R. L. DE SILVA
Resident Magistrate