

IN THE DISTRICT COURT OF MAURU

Criminal Jurisdiction

Criminal Case No. 1121 of 1976

THE REPUBLIC

vs.

PERRY KAPUA

CHARGE:

1. Common Assault: C/S 335 of the Criminal Code Act 1899 of Queensland - The First Schedule.

JUDGMENT:

The case for the prosecution is that the accused assaulted the complainant Bop on the 29th of August, 1976.

The prosecution has led the evidence of Anti Bop who has stated that in the early hours of 29th August, 1976, he was going home from Nibok District. When he was opposite the Chinese Location he saw two motor cars; one was a police vehicle and the other, a private land rover. He went past them and when he was on the bridge he noticed the lights of the car coming from behind. When he was at the bottom of the bridge a car came up and stopped him. It was the accused in a police car and the accused came up to him and said, "Let me smell your breath." He replied, "Why do you have to smell my breath?" The accused then said, "You are intoxicated. Get into the car." When he questioned as to why he should get into the car the accused punched him with clenched fists on the mouth and he fell down. He got up and asked the accused whether he did it in revenge because on an earlier occasion he failed to arrest him in his home. The accused replied, "Yes". At that stage Danny came along in a car and asked the accused why he punched him. The accused denied doing so. Then Danny asked the accused's permission to take him away and was allowed to go home. According to witness Danny he came across the police car and the motorcycle ridden by Bop and stopped to inquire as to what had happened. When he approached them Bop and the accused were arguing and he heard Bop say, "Why did you punch me. You did it as a revenge" and the accused said, "Yes". He then asked the accused what was wrong and the accused said that Bop was intoxicated and driving ast. At that time Bop was

crying and saying, "Why did you punch me?" He asked permission from the accused to take away Bop and he took Bop home.

The accused has given evidence and according to him when he was opposite the N.P.C. Location on patrol duty talking to the drivers of two cars whom he had stopped for traffic offences, he saw a motorcycle coming from a northerly direction and when it was near the spot he was standing the motorcycle changed to first gear, opened his throttle and took off at a very fast speed. The motorcyclist made a turn and came back and when he came close he again opened the throttle and dashed off and lost sight of it. At that stage he left the two cars and got into the police car and went after the motorcyclist. He stopped the motorcyclist at the bottom of the bridge and approached him. He told him that he was traveling fast and that he was intoxicated. A little while later a car came up and stopped. He asked Bop to get into the Police car and go with him. Then Danny asked him whether he could take Bop home and he allowed it and asked them to leave the motorcycle behind. He did not punch the complainant.

I have examined the evidence of the two prosecution witnesses very carefully and I find one contradiction in the evidence namely, that witness Bop had stated in his evidence that Danny asked the accused why he punched him. Danny in his evidence has denied asking the accused such a question. This contradiction, in my opinion, is not a material contradiction and does not in any way discredit or make it unsafe for the Court to act on the evidence of the two prosecution witnesses. I was impressed by the demeanour of these two witnesses and I have no doubt that both witnesses were speaking the truth.

It would appear from the evidence that there was some motive on the part of the accused for the alleged assault which motive the accused in his evidence has not denied. Witness Bop had asked the accused whether he assaulted him in revenge because of his failure to arrest him earlier and the accused had replied, "Yes". This has not been denied by the accused. Further, it is most unnatural conduct on the part of the accused not to say anything in reply when Bop asked him, "Why did you punch me" if, in fact, he had not punched him. I, therefore, reject the evidence of the accused as unworthy of credit and I accept the evidence of the two prosecution witnesses as they corroborate each other on all material facts and I, therefore, find the accused guilty and convict him.

15th November, 1976

R. L. DE SILVA  
Resident Magistrate