

IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 561 of 1978

THE REPUBLIC

v.

GERSON FRITZ

CHARGE: Negligent Driving: C/S 19(1) of the Motor Traffic Act 1937-1973 .

JUDGMENT:

It is in evidence that the accident occurred at Yaren near the windsock. According to witness Baguga he suddenly felt a jerk and the next moment his vehicle went off the road. His hood was pushed in and the bonnet and the front end was damaged. The windscreen was also broken and there was damage to the rear of his vehicle.

It is common ground that the accused was driving a bus and as he was trying to overtake Baguga's vehicle, a car came in the opposite direction and he braked to get behind the vehicle. The accused then crashed into the rear of Baguga's vehicle sending it off the road.

The accused who is a motor mechanic has stated in his evidence that he repaired the brakes of the bus in the garage and he took it on to the highway to test the brakes. He went around the Airport proceeded to Meneng and he found the brakes were in good working order. The accident occurred on his return. According to him when he was about to overtake Baguga's vehicle he found a car coming in the opposite direction and he applied his brakes to get behind Baguga's vehicle as it was the safest thing to do in the circumstances. At that stage his brakes failed and he crashed into the vehicle in front.

I have examined the evidence of witness Detabane who was in the bus at the time of the accident. His evidence is in conflict with that of the accused. He has stated that the brakes were not working. I have examined his evidence against the background of the evidence given by the other witnesses and the accused's own statement to Buguga soon after the accident that he was testing the brakes and it had no brakes. If the bus had no brakes there was no necessity to test it. Therefore it is more reasonable to accept the evidence of the accused that having repaired the brakes of the bus in the garage and having found the brakes to be in good working order he took the bus on to the highway to test the brakes. I was not particularly impressed by the evidence of witness Detabane who did not appear to be quite sure of what he was saying in the witness-box. On the other hand the accused stood the test of cross-examination and I was impressed by his demeanour.

The Prosecution has not rebutted the evidence of the accused that the accident occurred as a result of a sudden failure of the brakes in the bus. In view of this I hold that the Prosecution has failed to prove its case beyond all reasonable doubt and I find the accused not guilty and acquit him.

R.L. DE SILVA
Resident Magistrate

1ST NOVEMBER 1978