

IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 34 of 1978

THE REPUBLIC

v.

MAINA DETABENE

CHARGE:

1. Serious Assault: C/S 340(2) of the Criminal Code Act 1899 of Queensland - The First Schedule.
2. Driving whilst under the influence of intoxicating liquor: C/S 21(i) of the Motor Traffic Act 1937-1973.

JUDGMENT:

The case for the prosecution is that the accused was arrested in the early hours of the 1st January, 1978 for driving under the influence of intoxicating liquor. He was taken to the hospital by Sgt. Perry Kapua and Conzt. Aloysius Iwugia to be examined by a doctor.

Whilst waiting at the hospital, according to Sgt. Kapua, the accused started behaving in a cheeky manner in that the accused said, "You and your car are both bastards". The accused is alleged to have repeated these words many times and according to Sgt. Kapua, he asked him to settle down and stop talking but he just kept on talking in the same manner. The accused then immediately grabbed his uniform and refused to get into the police car. He could not be moved. It was only after two other police officers arrived that the accused agreed to accompany them to the police station. At the end of it, he was not examined by a doctor.

The witness was cross-examined by the accused and in answer to a question by the accused as to who used force first, Sgt. Perry Kapua has stated that it was the accused who used force first and that it was not he.

Const. Iwugia, who was present at the scene of the incident, went to the assistance of Sgt. Kapua and has stated that he heard Sgt. Kapua ask the accused, "What did you call us" and he heard the accused use the word "bastard". At this stage Sgt. Kapua stood up and said, "We will go back to the police station". The accused refused to do so. Then the Sergeant held the accused by the arm to make him stand up. It was then that the accused grabbed the front of his shirt and they struggled for a few seconds. The accused was still seated. It was at that stage that he intervened and separated them.

The accused has given evidence on oath and has stated that it was the police officer who grabbed him first and jerked him up by the front of his shirt. He then did the same to him.

The accused, in cross-examination, has admitted using the word "bastard" and he has stated that he did not mean any person in particular.

I have examined the evidence of the accused and I am unable to accept this explanation that he used the word "bastard" and did not mean anyone in particular. I cannot conceive of any person in his right senses just shouting out the word "bastard".

To my mind, it does not matter as to whether the police officer grabbed the accused and asked him to get up or whether he jerked him from the sitting position to stand up. The fact that the accused held Sgt. Kapua by his shirt is admitted by him. The question, therefore, arises as to whether a member of the public in the circumstances the accused was placed in, could use force when the police, if at all, had used reasonable force. I accept Const. Iwugia's evidence that Sgt. Kapua held the accused by the arm to make him stand up. It may be that the Sergeant in doing so jerked him up from his seat. This is within the limits of using reasonable force on an accused in custody and there is nothing whatsoever in the evidence which creates in my mind

any suspicion that the police went beyond the use of reasonable force on the accused. Therefore, the resulting conclusion is that the accused, whilst under custody, had no right whatsoever even if he was jerked up from his seat by the police officer to grab the police officer by the front of his shirt. His act constitutes an act of serious assault. I, therefore, hold that the prosecution has proved beyond all reasonable doubt the charge of serious assault and I find him guilty and convict him.

As regards the charge of driving whilst under the influence, the prosecution has failed to place before this Court any evidence whatsoever, apart from the fact that the accused was arrested for driving under the influence, that the accused was under the influence of intoxicating liquor. In the absence of medical evidence, neither Sgt. Kapua or Const. Iwugia have testified as to the condition of the accused at the hospital or at the police station. They have not stated that the accused was smelling of intoxicating liquor; that his speech was slurred; that he was staggering or he had blood-shot eyes. In these circumstances, I have no alternative but find the accused not guilty on the charge of driving whilst under the influence of intoxicating liquor and I find him not guilty and acquit him.

22nd February, 1978.

R. L. DE SILVA  
Resident Magistrate