



**IN THE SUPREME COURT OF NAURU
AT YAREN
[CRIMINAL APPELLATE JURISDICTION]**

Criminal Appeal No. 3 of 2023

BETWEEN: THE REPUBLIC

Appellant

AND: Foreman Roland

Respondent

BEFORE: Keteca J

Date of Hearing: 04th August 2025

Date of Judgment: 07th November 2025

Case may be cited as: Republic v Foreman Roland

Catchwords: Damaging Property: contrary to Section 201 of the Crimes Act 2016

Appearances:

Counsel for the Appellant: **A. Driu**

Counsel for the Accused: **R. Tagivakatini**

JUDGMENT

BACKGROUND

1. The charge against the Respondent was discharged by the Resident Magistrate (RM) on 04th August 2023. At paragraphs [22]- [23] he RM reasoned as follows:

- i. [22] The only inference I could draw in this matter is that someone had damaged a car used by the victim PW-1, as there is no acceptable evidence of identification of the accused. As per W-4, Senior Constable Luke, the accused, was arrested upon name given by PW-1. But on the contrary, PW-1 had not mentioned any name in DEX-1, which was made afterwards, creating huge doubt in my mind about identifying the person who committed the damage.

- ii. [23] Therefore I give the benefit of the doubt to the accused for the above reasons. The accused is not guilty of one count of Damaging Property under section 201(a) and (b) of the Crimes Act 2016 and I discharge the accused.

GROUND OF APPEAL

2. The grounds of appeal are:

- i. The RM erred in law and fact in failing to consider the totality of the evidence and finding the accused guilty of the charge against him; and
- ii. The RM erred in law and fact in passing a discharge of the accused after considering the evidence led by both parties during the trial.

SUBMISSIONS BY THE APPELLANT

3. The Appellant submits as follows:

- The trial ‘hinged on whether the accused was the one responsible for causing damage to the motor vehicle TT 1333, belonging to PW1, on 20th October 2021, and was reckless in doing so.’
- The trial Magistrate’s judgment does not assess all the elements of the offence and the prosecution evidence.
- Elements of the offence of damaging property are:
 - a) A person
 - b) Causes damage to property belonging to another person
 - c) Is reckless about causing damage to the property
- ‘The sole issue for the determination was the identity of the person.’ Counsel refers to the passage where the Magistrate said at paragraph [22]:
- *‘The only inference, I could draw in this matter is that someone had damaged a car used by the victim PW1, as there is no acceptable evidence of identification of the accused. As per PW4, Senior Constable Luke, the accused, was arrested upon name given by PW1. But on the contrary, PW1 has not mentioned any name in DEX1, which was made afterwards, creating huge doubt in my mind about identifying the person who committed the damage.’*
- Counsel submits that ‘PW4 never claimed he arrested the respondent because of the name given by PW1. The evidence, according to Counsel, PW4 and PW2 received a report that Foreman Roland was vandalising/ damaging a car in Aiwo District. There was also evidence from PW3 (the person that PW1 sought assistance from) that PW1 said that it was Foreman Roland that damaged his vehicle.
- Based on the above evidence, Counsel submits that the Magistrate ‘arrived at the wrong conclusion ‘on the identification of the element of the ‘person’ in paragraph [22] of his judgment. The evidence presented clearly identified the respondent as the person who damaged PW1’s vehicle.

SUBMISSIONS BY THE RESPONDENT ON THE IDENTITY OF THE PERSON

4. On this point, Counsel submits at paragraph [8] of his submissions:
‘The RM deemed that the complainant was not a credible witness due to his **prior inconsistent statements.**’

Counsel refers to my remarks in *R v Olsson* [2024] NRSC 34 and *R v Bill* [2024] NRSC 25 on the credibility of witnesses. In those cases, I referred to *THE STATE OF WESTERN AUSTRALIA v COATES* [2007] WASC 307 where BLAXELL at [54] said:

‘The determination of a witness’ credibility on the basis of demeanour does not require the exercise of any legal skill, and is not something which can be the subject of reasoned analysis. It is largely a semi-intuitive process, and most ordinary members of the community have the life experiences which equip them to make such an assessment.’

At [57], he said:

*‘Obviously, the assessment of each witness’ credibility will be a matter of critical importance in arriving at my findings of fact. It may be that I accept the whole of a witness’ evidence or that I reject it all. It may also be that I accept part of what a witness has had to say but reject the rest. The fundamental question in relation to each witness, and in relation to each matter the subject of his or her testimony, is **whether or not I believe the evidence.** The answer to this question will turn on my evaluation of a number of factors, including the **truthfulness of the witness**, the reliability of the observations made by him or her at the material time, and the accuracy of his or her recollections’*

At [58] Justice Blaxell said:

*‘Matters to be taken into account in this evaluation include the witness’ general demeanour whilst testifying, the consistency of the evidence (both within itself and with other evidence in the trial), personal characteristics such as powers of expression and apparent levels of intellect, the possible impact of alcohol or drugs, and the emotional state of the witness at the material time. **In the end, I should carefully assess all relevant matters and decide whether or not I can accept the witness’ evidence on a particular issue as being truthful and correct.**’*

(My emphasis)

5. On inconsistent statements, Counsel refers to *R v Thoma* [2020] NRSC 13 where Va’ai J said at [40] –[41]- The complainant under cross examination was asked about the inconsistency of her testimony with her written statement to police. She told the police in her statement that the first offending happened in the family room where she was living with her family. In her testimony the offending took place in another room. She told the court her testimony is the correct version of where the offending took place.

6. Counsel for the prosecution submitted that the correct procedure for challenging inconsistent statements is that after the inconsistency is identified and the witness has responded to the inconsistency then the written statement should be produced as is the practice in the Fiji High Court. I disagree. The written statement need not be produced if only one sentence in the statement is disputed. It is sufficient for the record if the witness accepts the inconsistency and responds to the inconsistency.
7. Counsel then looks at the reasons given by PW1 for the inconsistency in his statements. PW1 said that his second statement was the correct version of the events. PW1 had three sources of threats that caused him fear. These were:
 - i. First Statement (DEX-1) – no person identified;
 - ii. Second Statement (DEX-2) – he blamed the Respondent; and
 - iii. At trial- he blamed Constable Luke Agege.
8. PW4, was not asked about the allegation of his threats against PW1. Counsel suggests that PW1's claims of being threatened by PW4, which led to him giving inconsistent statements was a fabrication.
9. At paragraph [19] of his submissions, Mr Tagivakatini states:

'It was on this backdrop of inconsistency that the learned Resident Magistrate deemed the complainant unreliable, considering his qualifications as a qualified lawyer and that there was no other evidence of threats. There was no acceptable identification evidence, therefore the element of identity is not proven.'

CONSIDERATION

Prior Inconsistent Statements

10. In *Suresh v The Queen* (1998) 72 ALJR 769; 153 ALR 145; 102 A Crim R 18- Justices Gaudron and Gummow said (at [12]):

'As a general rule, a witness' prior inconsistent statement is received in evidence only if the witness denies having made the statement in question. That rule is not concerned with the evidentiary significance of a prior inconsistent statement, but with the efficient conduct of litigation. It is designed to prevent the calling of evidence on a matter in issue.'
11. In *R v Soma* (2003) 212 CLR 299; 140 A Crim R 152; 196 ALR 421; [2003] HCA 13 McHugh J said at 316 [55]) :

'A previous inconsistent statement cannot be proved where the witness admits making the statement: if the witness admits it, the purpose of discrediting the witness has been achieved.'

12. In the present case, the RM referred to PW1's prior statements at paragraphs [18- 21] as follows:

18. However, the PW-1 had given 3 Statements to the police. According to 1st statement (DEX-1), The victim didn't know the accused. He failed to mention in DEX-1, the name of the accused or that he met the accused, gave him a lift, had a conversation with him in the car, and gave money to the accused; further, the accused attacked his car by smashing the windscreen and window in front of PW-1. In brief, nothing related to their encounter but stated that "*I saw someone driving my car towards power station. i chased the car but could not catch it*" in the 2nd Statement (DEX-2).

19. When the victim (PW-1) was under cross-examination by Defendant's counsel, he explained that due to threats by The accused, he did not state real facts in his 1st statement DEX-1. Further witness mentioned the same in DEX-2: "Further to my previous statement, I want to tell now the truth of the incident which I previously did not tell out of threat and fear received from Forman." However, at trial, PW-1 said that due to the influence of a police officer named Luke (PW-4), he prevented him from mentioning facts. PW-1 agreed that he did not file a report about the police officer who said the accused would file a cross-complaint against him.

20. The victim is a qualified lawyer who used to work for the highest-ranking judges of the Nauru judiciary. Therefore even if he were prevented from mentioning that truth, he would have reported the officer involved, at least after making his 2nd Statement DEX-2, as he is responsible for laps, but there's nothing. The accused's family did not file a cross-complaint against the victim for trespassing even after PW-1 made the 2nd statement.

21. The time gap between DEX-1 and DEX-2 is 18 days. There was more than sufficient time to take action if the PW-1 feared harm by the accused. Further, it is impossible to think that the fear was on trough out this time as the matter was already before the law. Therefore, I hesitate to accept PW-1's evidence as credible.

13. PW1 did not deny having given prior inconsistent statement as regards the identity of the person who damaged his vehicle. Based on the above cases in paragraphs [10 & 11], PW1, the complainant's evidence has been discredited. It led the RM not to accept PW1's evidence as regards the identity of the accused.

14. Question- is the identification of the accused by PW1 during the trial supported by evidence of other witnesses? At page 112 of the Appeal Book, PW3- Natasha Mau said the following whilst being examined by the prosecutor:

Q- Did he (the complainant) tell you who was damaging his vehicle?

Ans- Yes, he told me.

Q- Did he tell you the name?

Ans- Yes

Q- What was the name?

Ans- Foreman

15. PW4 and PW2 also testified that they received a report that the accused 'was vandalising/damaging a car in Aiwo district.

16. Further, the RM did not consider that in his closing submissions, Counsel for the accused, in his analysis of the evidence, had conceded that the identification of his client was not an issue. As Counsel states in paragraph [16] of his submissions at the District Court:
'[16] There is no issue of identity as there was no alibi raised nor was there any question in relation to mistaken identity. The only issue was for a proper identification parade to be conducted for the purposes of fairness, which is an administrative investigation matter. Foreman Roland was correctly identified by PW1.'
17. On the issue of identification of the Respondent/ Accused I prefer the submissions of his Counsel at the District Court than in this Court.
18. I have looked at all the evidence and submissions here. I accept the argument by the DPP that there was sufficient evidence before the RM as regards the identity of the respondent accused.
19. I find that the resident Magistrate erred in finding that the Respondent was not the person identified to have caused damage to PW1's vehicle.

CONCLUSION

20. The appeal is allowed. I find the Respondent guilty as charged.
21. The matter is referred to the District Court for Sentencing.

DATED this 7th Day of November 2025


Kiniviliame T. Keteca

Judge

