

IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 197 of 1976

THE REPUBLIC

vs.

ALFRED BIRBIRINANG DICK

CHARGE:

1. Common Assault. C/S. 335 of the Criminal Code Act 1899 of Queensland - The First Schedule.
2. 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 unlawfully assaulted complainants Scotty and Star on the 22nd of February, 1976.

It is in evidence that on the day in question when Scotty and Star were drinking beer at Scotty's place the accused came in a car belonging to the Nauru Cooperative Society and having got down, went up to Star without saying a word and beat him up. After that the accused beat up Scotty with his fists. At that stage Scotty's daughter, witness Briar, came out and stopped the accused and took him away.

The prosecution has led the evidence of an alleged eye witness, Mrs. Briar. Her evidence does not fully corroborate the evidence of the two complainants. She has stated that the accused joined the two complainants in drinking for about ten minutes and suddenly, she noticed her father Scotty and the accused exchanging punches. She did not see who threw the first punch; neither did she see anything being done to Star.

This evidence is in direct conflict with the evidence of the two complainants, who have stated that the accused got out from his car, came up to them and without saying a word, beat them up with his fists. Although there is this conflict, this is not a material contradiction. The two complainants have given a very graphic account of the incident. Their evidence corroborate each other on all material particulars and I was more than impressed by their demeanour. I see no reason to reject their evidence and accept the evidence of Mrs. Briar whose evidence falls in line with the evidence given by the accused.

The accused has not denied the assault and in his evidence, has taken up the position that he felt or was afraid that the two complainants would gang up on him. He stated that

the complainants asked him to buy more beer and when he told them that he had no money with him, they abused him and made remarks which were insulting. He further stated that at one stage when he turned around he collided with Scotty and he thought that Scotty was going to attack him; and when Star said something, which he was unable to remember, he hit him. The accused cannot remember as to who threw the first punch.

I have examined the evidence of the accused very carefully and on his own evidence, I find that he has resorted to physical force in a situation, if I were to accept his version of the incident, that did not call for such drastic action.

Mr. Kun has very strenuously urged that the accused assaulted the complainants due to provocation and that he acted in self-defence. He has further brought to the notice of the Court section 23 of the Queensland Criminal Code and submitted the defence of automatism.

I would first deal with the defence of provocation. There is no evidence whatsoever that any of the complainants made any threatening gestures or uttered words which would have made a reasonable man come to the conclusion that he was in imminent danger of an assault. The accused, in his evidence, has not said so. The mere fact that the accused found Scotty standing close to him in the absence of any threatening gestures or words is, in my view, no justification for the accused to assault him; neither does the fact that Star who was seated in a chair having said something and laughed justify an attack on him. The evidence of the accused, does not reveal any statements made by the complainants which, in my view, would amount to provocation. Therefore, the defence of provocation must necessarily fail.

Even if I were to accept the evidence of the accused that the complainants uttered abusive statements and insulted him, I am of the opinion that such statements were not provocative to the extent as to make the accused lose his power of self-control. Going further, even if the statements could be called acts of provocation, the force used by the accused is clearly disproportionate to the provocation caused. The medical evidence reveals that there was a half-inch cut on Scotty's chin; few scratches and swollen bruises on his right eye and swollen bruises on his right cheek.

As regards self-defence the facts placed before this Court certainly does not show any situation where the accused had acted in self-defence. Mrs. Briar only stated that she saw Scotty and the accused exchanging punches. She has not stated as to who attacked and who defended. According to her evidence, there was a free-for-all fight.

Therefore, I am of the opinion that the accused did not act in self-defence. Mr. Kun has submitted that it is most unnatural conduct for the accused to have got out from his car and assaulted the two complainants without saying a word. The reason for the assault is best known to the accused and as far as motive is concerned, it is immaterial as regards criminal responsibility.

As regards automatism, it is quite evident that this submission was put forward as the defence was not fully conversant with what is actually meant by automatism.

Automatism is a defence when the facts show that the accused is not conscious of what he is doing. It means

unconscious, involuntary action and is a defence because the mind does not go with what is being done. The defence must be able to point to some evidence, whether it emanates from their own or the prosecution witnesses from which the Court could reasonably infer that the accused acted in a state of automatism. I am of the opinion that there is no evidence whatsoever to consider the existence of automatism. It is interesting to note that the defence having put forward the defence of provocation also puts forward the defence of automatism. It is like trying to blow hot and cold at the same time.

The statement by the accused that he does not remember who threw the first punch is not a defence at all. When a man is charged with dangerous driving, it is not a defence for him to say "I don't know what happened. I cannot remember a thing." Loss of memory afterwards is never a defence in itself, so long as he was conscious at the time of the act.

I, therefore, accept the evidence of the two complainants Scotty and Star and hold that the prosecution has proved beyond all reasonable doubt that on the day in question, the accused did unlawfully assault the complainants Scotty and Star.

I find the accused guilty on Counts 1 and 2 and I convict him.

6th July, 1976.

R. L. DE SILVA
Resident Magistrate