

IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 426 of 1976

THE REPUBLIC

vs.

ALEX DABUAE

JUDGMENT:

The case for the prosecution is that the accused drove a Ford Falcon car whilst being unlicensed on the 18th day of May, 1976 and having met with an accident, failed to report it to the Police.

It is in evidence that the accused had been with 3 other friends to Anibare on the day in question to drink. At about 7.00 p.m. the accused got into his car and drove away and collided with a white car driven by Mrs. Coral Star.

There is the evidence of witness Don who has stated that he went to the bush to relieve himself and when he came back he found that the blue car which he had driven earlier during the day to come to Anibare was missing. The accused was also missing.

According to witness Gina, the accused took the car and collided with another and after the crash he kept on going. Police Constable Rhudy has stated in his evidence that about 25 minutes after he received the report of the accident he saw the accused walking on the road in a zigzag manner about 600 meters from the scene of the accident. He also noticed his car parked about 60-70 yards from where the accused was. The left front mud gear was smashed and the engine was still warm.

Mr. Aroi has submitted that there is no direct evidence against the accused and that the prosecution evidence is circumstantial. He also submitted that the evidence of the witnesses Don and Gina should not be accepted because Don has stated in his evidence that he was drunk and Gina, after consuming 8 cans of beer, would have been affected.

I am unable to agree with Mr. Aroi's submission that there is no direct evidence. Witness Gina's evidence that the accused took the car and collided with another is direct evidence. As to whether the Court should accept her evidence

because she has stated in evidence that she consumed 8 cans of beer is another matter. Witness Gina has quite categorically stated that she was not affected by the liquor she had consumed. It may well be that the witness has the capacity to consume such a quantity of beer and not be affected to the extent that she cannot comprehend what is going around her. I, therefore, accept her evidence and I am quite certain that witness Gina was in a state that she could and did see the accused take the car and collide with another.

Witness Don's evidence is circumstantial. He came to the conclusion that the accused drove the car because when he came back from the bush the car was missing and so was the accused. This is a perfectly normal inference that any reasonable man would draw in the circumstances. Again, the question is as to whether the Court should accept his evidence because he has stated that he was drunk. There is no evidence before the Court that he was in such a state of drunkenness that he could not have noticed anything that happened. The witness may have been drunk but there are degrees of drunkenness and the fact that the witness walked up to the scene of the accident and spoke to Mrs. Coral Star and told her that it was the accused's car that hit her car clearly reveals that he was able to comprehend and notice what happened. He was not in a state of drunkenness which is commonly called delirium tremens. I would, therefore, accept his evidence.

Constable Rhudy's evidence is purely circumstantial. Circumstantial evidence must be of such a nature that it should lead to the irresistible conclusion that it was the accused and no other who had committed the offence. When one examines Constable Rhudy's evidence and that of witness Don, there is no other conclusion that could be arrived at other than that it was the accused and no other who drove the car and collided with the car of Mrs. Coral Star. The circumstantial evidence is strengthened by the evidence of witness Gina.

Constable Rhudy has stated that the accused did not report the accident to the Police. This has not been questioned by the defence.

I, therefore, hold that the prosecution has proved its case beyond all reasonable doubt and I find the accused guilty on Counts 2 and 3 and I convict him.

9th July, 1976.

R. L. DE SILVA
Resident Magistrate