



**IN THE DISTRICT COURT OF NAURU**

**CRIMINAL JURISDICTION**

**Criminal Case No. 9 of 2020**

**THE REPUBLIC OF NAURU**

**-v-**

**ROPI BURAMAN**

**JUDGMENT**

*Coram:* Penijamini R. Lomaloma

*Prosecution:* Mr. Filimoni Lacanivalu

*Defence:* Mr. Ravunimasei Tagivakatini

*Trial:* 28 July 2020

*Judgment:* 7<sup>th</sup> August 2020

**CATCHWORDS:** *Common assault. Defence of lawful act*

**Introduction**

1. The defendant is charged with one count of common assault contrary to section 78 (1)(a), (i) and (b)(ii) of the Crimes Act 2016.
2. The prosecution called witnesses and having found that there was a case to answer, the accused elected to give sworn evidence.
3. Bartholomew Gadeanang is 8 years old. He understands the difference between right and wrong. He knows that it is wrong to lie. He understands that he has to tell the truth. He was then sworn on the holy bible in Nauruan and testified in Nauruan.
4. Bartholomew lives in Anetan with 2 sisters and 3 brothers, his mother and grandmother. He does not attend school. He plays games inside and outside the house with his siblings. He knows Ropi Buramen, the accused as his grandfather. (He is actually his granduncle.) Ropi lives at the back of his house.

5. Bartholomew remembers that on 20<sup>th</sup> July 2019, he was playing marbles outside their house with Absody Caleb, Johh Atu, and Milca. Milca is a girl who is related to him. She lives in the back of the house. They were playing marbles and Bartholomew won and Milca lost. Bartholomew said that after Milca lost, she went to “dob” on him to the accused at the back of the house. Bartholomew said that Ropi then came, grabbed him around the shoulders, then around his neck. Bartholomew said:

He approached from the front. He used both hands. He then lifted Bartholomew by the neck and tossed him to the side. Bartholomew demonstrated how he was held, where he was held and how he was tossed to the side. Ropi was angry at me. I had a fit. I did not consent to anything that happened to him. After I landed on the ground, I went to my house. I walked and then I ran because Ropi strangled me. I entered the kitchen and then the lounge. A man and my grandmother were there. Then I went to hide at the door at the front of our house. There is some storage space there—that’s where I hid because Ropi strangled my neck. I was scared he will strangle my neck again.

6. In cross-examination, Bartholomew denied that he teased Milca after beating her; denied that he was stopping the game by blocking the hole; denied that Milca complained to Ropi because he was bullying her; and denies that Ropi called out to him first.
7. Bartholomew agrees that when he is naughty, he can be disciplined by adults; agreed that Ropi touched him on the shoulder first but disagreed that Ropi’s hands slipped up to his neck and head when he ducked.
8. In re-exam, Bartholomew said he felt pain on his neck where Ropi grabbed him.
9. Febrina Buramen testified that she is Bartholomew’s grandmother and is the older sister of the accused. She lives in the main house with her daughter Leilani and her children, including Bartholomew. The accused, lives in a small house at the back of the main house.
10. She remembers the 20 July 2019. Between 4-5 pm, she was sitting alone in the lounge when she heard Bartholomew scream and run into the kitchen from the back where he had been playing with the other children. He ran into the lounge and hid behind the door. She asked her what happened and Bartholomew told her that Ropi strangled him. When Leilani returned from hospital, she told her what happened and Leilani called the police.
11. In cross-examination, Febrina said she disciplines her grandchildren when they misbehave; and that sometimes she tells them that Ropi will smack them. Febrina said Leilani had gone to the hospital to give birth; that she returned home between 5-15 minutes after Bartholomew had hidden behind the door; that Bartholomew did not actually tell her what happened to him but it was Leilani who told her about it.

Febrina agrees that Leilani was stressed after just giving birth. Febrina did not speak to Ropi because she did not know what happened to Bartholomew. She did not ask Bartholomew if he was naughty.

12. Ropi Buramen elected to give sworn evidence. He is retired and lives at Anetan District at his mother's house. He said he was fixing his fishing net at his house when the children called out to him to see what another child was doing. The children were calling out to Febrina but she was not giving them any attention so Nola called out to him. The accused came out and told Bartholomew to leave the area and he went back inside. He said there were so many children playing marbles. I told Bartholomew to leave the other children alone and to leave the playing area because the other children told me that he was being a nuisance there. When Ropi went inside, the children called out again. Ropi then returned outside and saw Bartholomew standing on the hole and when the children threw their marbles towards the hole, Bartholomew would kick away the marbles that did not belong to his siblings.

I told him to leave and when he didn't go, I went towards him. I went to grab his arms, but he ducked and that's when I grabbed his head, moved him to the side and told him to leave. That's when he crouched down and started to cry. I then told him to leave, to go away. His 2 siblings went to their grandmother and she called him over to join her. I hear at night and every day they get smacked by their mother and grandmother. I can hear them. Febrina's other two children discipline them too.

If I see them playing outside and they do wrong, I call out to them and tell them to go home. My hands are big and if I hold his head, I will also hold his neck incidentally. Leilani didn't approach me when she returned and she hasn't approached me from then till now.

Bartholomew said I strangled his neck but I will say I didn't strangle his neck.

Disciplining of children in Nauru—its normal for all seniors to do that when children are doing wrong. When the kids told me I could see that he was being a nuisance and annoying the other children.

13. In cross-examination, the accused said when he sees children being naughty, he tells them to leave. He was at his place on the day and it is very close to the other house. The children were playing and Bartholomew was just standing there in the middle. He was not playing with the others.
14. The accused said he was not angry. He had told Bartholomew to move but when he refused he went across and lifted him and moved him away. When he went to grab Bartholomew's shoulders, he ducked resulting in him grabbing his head.

## Discussion

15. I prefer the evidence of the accused over that of Bartholomew. Bartholomew's behaviour is typical of some children who run crying to their grandmother or parents when someone else disciplines them. They often exaggerate or lie to get sympathy and to invite their mother or grandmother in this case to take retaliatory action against the person who disciplines them. Ropi's evidence is logically consistent and probable. Any adult in his situation would most likely behave as he did. Some adults would mete out corporal punishment in the situation explained by Ropi.
16. I find that Bartholomew Gadeanang was a being a pest to the children who were playing marbles. At least one of the children cried out for help. Bartholomew was standing at the hole, preventing its use by the marble players. Having failed to move him by verbal warnings, Ropi Buraman lifted him up by grabbing him around the shoulders but since the latter ducked down to avoid him, the hands wrapped around the head and neck area. That was an accidental and not intentional result. Mr. Buraman then set him aside, away from where he was standing and allowed the other children to continue their game of marbles.
17. I find from the evidence that all the elements of the offence of common assault have been satisfied and would convict the accused as charged if he had no defence.
18. However, section 78(2) needs to be examined further:-

### *Common assault*

*(1) A person (the 'defendant') commits an offence if:*

*(a) the defendant intentionally:*

*(i) engages in conduct that results in a direct or indirect application of force to another person; or*

*(ii) makes physical contact (directly or indirectly) with another person knowing that the person might reasonably object to the contact in the circumstances (whether or not the person was aware of the contact at the time); or*

*(2) However, conduct that is within the limits of what would be acceptable to a reasonable person as incidental to social interaction or community life cannot amount to an offence under this section.*

19. Section 78(2) deals with touching that would amount to assault but which cannot be avoided in a social setting or in community life such as accidental touching in a crowded area, touching during dances, sports, and cultural activities are all covered

by section 78(2). This was a deliberate touching but it was done as an incident of community life.

20. Parental rights to discipline their children has been a long established right in the common law. In *Regina v Hopley*[1860]<sup>1</sup>the court said:

*By the laws of England, a parent or schoolmaster(who for this purpose represents the parent and has the parental authority delegated to him), may for the purpose of correcting what is evil in the child inflict moderate and reasonable corporal punishment, always, however, with this condition, that it is moderate and reasonable.*

21. This common law right became part of the laws of Nauru by virtue of section 4 of the Customs and Adopted Laws Act 1971. This common law rule was encoded in section 280 of the Criminal Code of Queensland 1899. There is no equivalent provision in the Crimes Act 2016 so when the Criminal Code 1899 was revoked by the Crimes Act 2016, the common law right survived. The common law right of a parent to discipline his children is subject to section 5 of the Customs and Adopted Laws Act 1971 which states:

*5. (1) The common law, statutes, rules, regulations and orders adopted by the last preceding section shall have force and effect within Nauru only so far as the circumstance of Nauru and the limits of its jurisdiction permit and only so far as they are not repugnant to or inconsistent with the provisions of this Act or..... any law enacted hereafter by Parliament .....*

...

*(3) For the purpose of facilitating the application of any part of the laws of England adopted by this Act it shall be lawful for any Court, and any judge or magistrate thereof, to construe it with such verbal alteration not affecting the substance, as may be necessary to render it applicable to the matter before such Court, judge or magistrate.*

22. What is moderate and reasonable depends on the circumstances and the standards of the times. The common law right has to be applied with the Convention on the Rights of the Child (CRC) and the Child Protection and Welfare Act 2016 (CPWA).
23. Nauru acceded to the UN Convention on the Rights of the Child on 27 July 1994. Accession has the same legal status as ratification. Ratification defines the international act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act.<sup>2</sup> The Child Protection and Welfare Act 2016 was enacted to put into effect the principles of the CRC.

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<sup>1</sup> ] EW Misc J73 (1860) 2 F&F202; 175 ER 1024

<sup>2</sup> [Arts.2 (1) (b), 14 (1) and 16, Vienna Convention on the Law of Treaties 1969]

24. Section 5 of the CPWA sets out the guiding principles so that we can harmonise existing law and the CPWA:-

*5 Guiding Principles*

*(1) The core principle for administering this Act is that the safety, wellbeing and best interests of a child are paramount.*

*(2) This Act must be applied, implemented and enforced in accordance with Nauruan tradition, culture and community values, except where such matters conflict with the rights of children as provided for in this Act.*

*(3) When interpreting or applying any provision of this Act, and when exercising any power, duty or function related to the protection of a child or the promotion of the welfare of children, all persons must act in accordance with the following principles:*

*(a) a child has a right to be protected from harm or risk of harm;*

*(b) a child's family has the primary responsibility for the child's upbringing, protection and development;*

25. Pacific Islanders often live with extended families in a village. In Nauru, there are Districts instead of villages and within each district, and in general, extended families have their houses next to each other. That is the tradition. It is also the tradition in Nauru, like other Pacific Islands that the parental rights to discipline children is shared by certain members of the extended family. These rights are not written down but we know how far we may go.

26. It is in the best interest of the child that he be taught well by his parents to ensure his safety and well-being, not only now but in the future. It is Nauruan and a Pacific tradition that elders teach younger members of the family how to behave in different situations and with different people. What the accused did to Bartholomew is part of tradition. It is to stop that type of behaviour which could lead to some other child assaulting Bartholomew in future so in that light, it is consistent with guideline 5 3(a). The accused is the granduncle of Bartholomew and is required by Nauruan tradition to carry out some common law parental duties which in the UK rests with parents only. I find that he acted pursuant to that tradition to stop Bartholomew from being a pest, and to protect the other children that were there also. The action was moderate and very reasonable in the circumstances. It is also consistent with guiding principles 1, 2, 3(a)& 3(b) and so it was a legal exercise of common law parental duties in the Nauruan custom.

**Conclusions**

27. The actions of the accused was justified by the common law right of parental discipline as extended by Nauruan custom to certain members of the extended family which included the accused. The "assault" on Bartholomew was therefore justified by section 52 of the Crimes Act and the accused is absolved of any criminal responsibility.
28. The accused is therefore acquitted.

  
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**Penijamini R Lomaloma**  
**Resident Magistrate**

The seal of the District Court of Nauru is circular. It features a central emblem with a sun, a ship, and other symbols, surrounded by the text "DISTRICT COURT OF NAURU". The seal is stamped in blue ink.