

IN THE SUPREME COURT OF NAURU

Criminal Jurisdiction

Criminal Appeal No. 15 of 1976

THE REPUBLIC

VS.

MORRIS DEMINGAUWE

22nd October, 1976 at 3.30 p.m.

In Court

Before Mr. Justice I.R. Thompson, Chief Justice

For the Republic: Sub-Inspector D. Gioura

For the Appellant: Mr. K. Aroi

Appellant absent.

COURT: This is shown as an appeal against conviction and sentence, the ground of appeal against conviction being that no plea was taken in respect of the fourth count. According to the record a plea was taken and facts constituting the offence were stated to the Court by the prosecution and agreed to by the appellant.

AROI: According to the appellant, who was not represented, the counts were not put to him one by one but all were read out together. The Clerk then asked whether they were true. The appellant replied that some were but some were not. There was bound to be confusion because of the way the charge was put to him.

COURT: These allegations should be supported by affidavit and the prosecution should have a chance to answer them if it wishes.

AROI: The appellant agrees with the facts as stated but wished to rely for a defence on a belief that he was entitled to drive.

COURT: That is a matter which cannot be investigated in these proceedings. If the conviction is set aside, there will be a new trial in the District Court. But it can be set aside only if the allegations made as to the irregularity in the proceedings are substantiated, or admitted by Mr. Gioura.

ORDER: Adjourned until 28th October, 1976, at 9.00 a.m. for appellant to file and serve on Sub-Inspector Gioura affidavits supporting allegations made and for Sub-Inspector Gioura to file affidavits in reply if he wishes to dispute the facts in the appellant's affidavits. Appellant's bail unchanged.

22/10/76

I.R. THOMPSON
Chief Justice

28th October, 1976 at 9.00 a.m.

In Court

For the Republic: S/I D. Gioura

For the Appellant: Mr. K. Aroi

Appellant present.

COURT: I have read the affidavits which conflict entirely with one another. While normally, on that basis, I should not be willing to regard the record of the lower court's proceedings as incorrect and do not so regard them in this case, I am willing to take an unusual course because the matter relates to the plea. It is not a question of the appellant having been tried on the merits of the case. He says that he had a defence of honest and reasonable belief in facts which would have made his driving innocent. He was unrepresented at the hearing. In the circumstances, in order that he may not have a sense of grievance that he was not given an opportunity to explain away the facts he admitted, I shall allow the appeal against conviction on the fourth count only and order that on that count he be tried again in the District Court.

There are no grounds for allowing the appeals against sentence on the first three counts.

JUDGMENT: Appeal allowed against conviction on fourth count. Conviction on that count quashed and sentence set aside. Appellant to be tried again in the District Court on that count; a new plea is to be taken.

28/10/76

I.R. THOMPSON
Chief Justice

(Sentence: Count 1 - \$5 - I/D 5 days' imprisonment.
Count 2 - \$10 - I/D 10 days' imprisonment.
Count 3 - \$10 - I/D 10 days' imprisonment.
Count 4 - 3 months' hard labour.)