IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 202 of 1976

THE REPUBLIC

v

GEORGE BRAY TEDDY

Charge:

1. Assault Occasioning Bodily Harm. Contrary to Section 339 of the Criminal Code Act 1899 of Queensland - The First Schedule.

2. Obstructing a police officer while acting in the execution of his duty. Contrary to Section 340(2) of the Criminal Code Act 1899 of Queensland - The First Schedule.

3. Using obscene language in public place. Contrary to Section 5(a) of the Police Offences Ordinance 1967.

4. Offensive behaviour in a public place. Contrary to Section 5(a) of the Police Offences Ordinance 1967.

5. Drunk in a public place. Contrary to Section 5 of the Police Offences Ordinance 1967.

JUDGMENT:

The case for the prosecution is that the accused assaulted Mrs. Catherine Antonio and caused her bodily harm on the 19th March, 1976, and after the incident when she was taken to the Nauru General Hospital to be examined by a doctor, the accused assaulted a police officer while acting in the execution of his duty and used obscene language. The accused is also charged with offensive behaviour in a public place.

It is in evidence that Mary, a girl from the Marshall Islands, came to Nauru sponsored by the accused a few days before the alleged incident. The accused had also paid her air fare.

It is also in evidence that when she arrived in Nauru she was met by the accused and Katherine and they all went to the accused's home and stayed there about two hours. Later Mary went to Katherine's home.

The evidence has revealed that Mary was with the accused on Wednesday and Thursday and on Friday afternoon, Katherine stopped them when she saw the accused driving his minimoke with Mary. Katherine walked up to the minimoke and took Mary back to her car. The accused appears to have resented this and attempted to take Mary back to his minimoke.

During this incident of Mary being taken to and fro from the accused's minimoke to Katherine's car, the accused had pulled Katherine who was seated in her car. As a result of this action Katherine fell to the ground and sprained her left arm.

Katherine, in her evidence, has stated that when she brought Mary back to her car for the second time and seated her between herself and Carron, the accused suddenly pulled her down and she fell to the ground and sprained her arm.

Witness Carron Sato, who was the driver of Katherine's car, has stated in her evidence that the accused pulled Katherine to the ground and she got injured. She has further stated that when Katherine was on the ground the accused was going to hit her when Debano stopped him.

Apart from the fact that witness Carron has corroborated Katherine on all material particular as regards the assault, the defence's own witness Mary has further strengthened the prosecution case as regards this incident as she has stated in her evidence that when she was seated in the front seat of Katherine's car, the accused approached Katherine and pulled her and she fell to the ground. Later, Katherine had her arm in a sling.

The position taken up by the defence as regards this incident is that the accused was provoked by Katherine's action in taking Mary from his minimoke as he had every right to keep the girl with him as he had paid her air fare. Unfortunately, however, the defence witness Mary has quite categorically stated that she came to Nauru on the understanding that she was to stay with Katherine and that the accused knew about it.

On the question of provocation, the law is very clear. If a man be provoked by violence, such as a blow, and retaliate forthwith the retaliation must be that which may be expected of an ordinary reasonable man so provoked. The test is whether that which provoked the retaliation must be such as would deprive a reasonable man of his self-control and induce him to act hastily.

The reasonable man, the ordinary person, is the person that has to be considered when considering the effect which any acts, any conduct, any words, might have to justify the steps which were taken in response thereto. So that an unusually excitable or drunken person is not entitled to rp provocation which would not have led an ordinary person to have acted in the way he did.

On the evidence, therefore, I am perfectly satisfied that Katherine was entitled to get Mary back as she has spent a few days with the accused and the fact that she got Mary into her car cannot, by any stretch of imagination, be called provocation. For these reasons the defence of provocation cannot be sustained and I find that the prosecution has proved Count 1 beyond all reasonable doubt and I find the accused guilty and convict him.

Later there was another incident at the Nauru General Hospital. Four witnesses have referred to this incident, two of them being police officers, one of whom is the alleged

victim of the assault, Constable Dageago. I will first deal with the evidence of Constable Dageago.

According to him he took the accused to the Nauru General Hospital to be examined by a doctor as the accused was after drinks. He was accompanied by Constables Desmond Geoffrey and Kepae. Whilst they were waiting on the verandah outside the Out-Patient Ward, the accused got up and went towards the kitchen area. He then called out to him and said, "Where are you going? Come and sit down here". Then the accused looked at him and spat on the floor of the hospital five or six times. As he walked up he looked at him as if he was something rotten and spat on the floor again. When the accused was near him he spat again. At this stage he stood up. Then the accused pushed him and he fell towards a seat. He grabbed the accused by the neck of his shirt and they struggled. He got him to lie down and the accused kicked him on the stomach. Then Constables Geoffrey and Desmond got hold of the accused. He had a baton in his hand but did not use it. He did not see Constable Kepae hit the accused.

The prosecution has not led the evidence of Constables Geoffrey and Desmond who were on the spot when the accused is alleged to have kicked Constable Dageago. For some strange reason best known to the prosecution, they have not led the evidence of these two police officers but has led the evidence of Constable Kepae whose evidence does not in any way throw any light on the assault, as according to the evidence of Constable Kepae, he was talking to Katherine when he heard the sounds of a struggle. There is a duty cast on the prosecution to place before the Court the best available evidence and this had not been done in this case.

When one examines Constable Kepae's evidence it becomes abundantly clear that the prosecution had made a desperate attempt to give the entire incident a twist and make it appear that a police officer was assaulted. I refer specially to his evidence that Constable Dageago's baton got stuck in his pocket and he could not take it out. Constable Dageago's own evidence on this point is that he had it in his hand but did not use it. From the evidence it does appear to me that it was not the baton that got stuck but it is the prosecution that has got stuck as the entire prosecution case as regards Count 2 is teeming with infirmities.

On a perusal of the evidence it is quite clear that Constable Dageago assaulted the accused. Both prosecution witnesses Katherine and Carron and defense witness Cannon, whose evidence I accept, have stated that the accused was hit by the police officers.

Constable Dageago's evidence is not corroborated by a single prosecution witness. I am mindful of the fact that if the Court accepts his evidence there need not necessarily be corroboration but in the circumstances of this case I am extremely reluctant to act on the uncorroborated evidence of Constable Dageago for more reasons than one.

If Constable Dageago was speaking the truth his nornal re-action when questioned by Constable Kepae as to what the trouble was would have been to inform his fellow police officer that he was pushed and kicked in the stomach a little while ago by the accused. But strangely enough he makes no mention

of it but rather refers to something uttered by the accused that was not good. The Court has to take into account this unnatural re-action on the part of Constable Dageago when considering his evidence.

On the other hand, Constable Kepae, whom I accept as a truthful witness, very frankly admitted pushing the accused by his jaw as a result of which the accused fell down. The reason given by this police officer for pushing the accused is because the accused turned towards him. It is in evidence that they were standing shoulder to shoulder looking at the notice inside the Out-Patient Ward when the accused turned towards him. And it is also in evidence that the accused did not raise his hands or make any gesture which would indicate that he was going to assault him. Therefore, it is quite clear that Constable Kepae pushed the accused for no reason at all.

I am constrained to make the observation that when a person is in police custody a sacred duty is cast on the police officer in whose charge the person is, to act with a great deal of restraint. This unfortunately has not been done in this case.

Therefore, on the entirety of the evidence placed before this Court I have no doubt whatsoever that the Police officers concerned exceeded their rights as the accused had not given them grounds for assaulting him. I accept the evidence that the accused spat on the hospital verandah but this certainly does not call for violence against the accused.

I am, therefore, of the opinion that it would be extremely unsafe to act on the uncorroborated evidence of Constable Dageago particularly in view of the fact that the prosecution has not led the evidence of Constable Geoffrey and Kepae. I, therefore, find the accused not guilty on Count 2 and I acquit him.

As regards Count 4, there is the evidence led by the prosecution that the accused spat on the floor of the verandah. It is also in evidence that the accused drove his minimoke inside the hospital. Taking all these into consideration, I am of the opinion that the accused conducted himself in a manner that could be called offensive behaviour and I, therefore, hold that the prosecution has proved Count 4 beyond all reasonable doubt and I find the accused guilty on Count 4 and I convict him.

27th April, 1976.

R. L. DE SILVA
Resident Magistrate