

IN THE DISTRICT COURT OF NAURU  
Criminal Jurisdiction  
Criminal Case No. 1078 of 1976

THE REPUBLIC

vs.

DONALD DAME

CHARGE:

1. Race with another vehicle? C/S 16(3)(i) of the Motor Traffic Act 1937-1973.
2. Driving a motorcycle at a speed exceeding thirty miles per hour: C/S 28(a) of the Motor Traffic Act 1937-1973.
3. Driving unregistered cycle: C/S 17(1) of the Motor Traffic Act 1937-1973.
4. Using uninsured motorcycle: C/S 18(1) of the Motor Vehicles (Third Party Insurance) Ordinance 1967-1972.

JUDGMENT:

The case for the prosecution is that the accused raced with another vehicle at a speed exceeding 30 miles per hour and also that his motorcycle was not insured and not registered.

Sgt. Perry Kapua has given an account of seeing two motorcyclists on the pinnacle-side road of the Aerodrome when he was parked near the Works Department in his police car. According to him these two motorcyclists came from Boe District travelling at normal speed. After they passed the Aerodrome they started gathering speed and when they were about 40 or 50 yards from the Air Terminal they changed gear and opened up the throttle. The motorcycle in front was leaving the other behind. They travelled in this fashion for about 300 yards and he noticed that the motorcycle that was leading was reducing speed and the other motorcycle was catching up. From near the house of the Minister of Justice they opened their throttles again and one motorcycle was trying to catch up with the other. They did this right up to the intersection at the end of the Aerodrome. The motorcyclists then took a turn and headed toward Boe on the seaside past the Administration block. Near Yaren church he heard the noise increase and saw one of the motorcyclists leave the other behind. From the noise he assumed that they were on third gear and near Parliament the motorcyclist who was leading changed to top gear. He started

his car and waited for the two motorcyclists and the leading motorcyclist went past him at a very fast speed. Soon afterwards the second motorcyclist came up and when he saw him he reduced speed. He went after the motorcyclist and stopped him in Boe District but the motorcyclist who was leading kept on going maintaining the same speed and he lost sight of him. His estimate of the speed was about 90 miles per hour. That motorcycle was driven by the accused. He stopped the other motorcyclist in Boe District and told him that he was going to book him for speeding and racing. He also asked him as to who was the other person who went past and he was told that it was the accused.

The prosecution has also led the evidence of witness Joey who has admitted to be the other motorcyclist and he has given an account which is almost the same as that related by Sgt. Kapua. The witness has stated that he was stopped by the police officer and asked as to who his friend was and he said, "I think it was Donald." The question of identity is all important in this case and I find that although Sgt. Kapua stated that he recognised the driver of one motorcycle as the accused, he has admitted that he asked the other motorcyclist as to who it was in order to see whether what he saw was correct. This clearly shows that there was a doubt in his mind however slight that doubt may have been. Apart from this, witness Joey says that he told the police officer that he thought it was Donald as he himself was not certain as to the identity of the other motorcyclist. In cross-examination he has stated that he did not recognise the driver of the other motorcycle because he was far ahead. Therefore, taking into consideration the time that this incident occurred namely, 3.30 a.m., and the fact that the evidence of the two prosecution witnesses are in conflict as regards the question of identity the accused is entitled to the benefit of the doubt. The prosecution has not placed before this Court sufficient evidence to establish beyond all reasonable doubt that it was the accused and no other who rode the motorcycle on the day in question.

The prosecution has not led any evidence on Counts 3 and 4. I, therefore, find the accused not guilty on all four Counts and acquit him.

23rd November, 1986

R. L. DE SILVA  
Resident Magistrate