

IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 1226 of 1976

THE REPUBLIC

vs.

GARCIA ANSLEM

CHARGE:

1. Common Assault: C/S 335 of the Criminal Code Act, 1899 of Queensland (adopted).
2. Offensive Behaviour: C/S 5(d) of the Police Offences Ordinance, 1967.

JUDGMENT:

The complainant Elizabeth in her evidence has stated that on the day in question the accused, who is her brother, entered the house and punched her on the face when she was in the kitchen. She does not know the reason for the assault. At that time Jacqueline and some children were in the house. The accused also threw something at the window. She was offended by the behaviour of the accused.

Witness Jacqueline has admitted being in the house at the time that the accused was in the kitchen. She has stated that she heard Elizabeth asking the accused to go out in a loud voice but she makes no reference to the assault or the fact that the accused threw something at the window. Neither does this witness state that Elizabeth complained to her that the accused had punched her on the face.

The position taken up by the accused is that when he was speaking to Elizabeth he was waving his finger at her and it came in contact with her lips. The reason for doing so was because Elizabeth told him that he was intoxicated and asked him not to go inside the house and speak to Jacqueline as he might assault her.

It is significant to <sup>note</sup> ~~know~~ that witness Jacqueline makes no mention of the fact that Elizabeth was punched by the accused. She was not an eye-witness to the incident but the normal reaction on the part of any person in the position of Elizabeth would have been to inform whoever was in the house at that time that she was punched by the accused. This, in my view, is most unnatural conduct. Neither does witness

Jacqueline refer to the accused throwing something at the window which, too, she would have known if Elizabeth related to her as to what occurred between her and the accused. In view of this, I am more inclined to accept the version of the incident as related by the accused.

Mere words can never amount to an assault. There must be some bodily act or gesture associating <sup>ed</sup> with the words indicating an intention of assaulting ~~for~~ <sup>for</sup> which an ordinary person might reasonably construe as indicating such an intention.

There is no evidence from which the Court can come to a finding that when the accused waved his finger at Elizabeth's face it was associated with words which would indicate that he had the intention of assaulting her. According to the statement of the accused, Ex. "X", the accused had only frightened the complainant and he also stated that he was playing with them,

For these reasons I find the accused not guilty on both Counts and I acquit him.

24th November, 1976

R. L. DE SILVA  
Resident Magistrate