

IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 59 of 1977

THE REPUBLIC

vs.

HWANG CHARNG

CHARGE:

1. Indecent assaults of female: Contrary to Section 350 of the Criminal Code Act, 1899 of Queensland - The First Schedule.
2. Common Assault: Contrary to Section 335 of the Criminal Code Act, 1899 of Queensland - The First Schedule.

JUDGMENT:

It is in evidence that the child Salima was awakened by the accused at about midnight on the 19th of February, 1977.

The evidence of Salima's mother is that she was awakened by the voice of a person speaking in Chinese. She recognised the voice as that of the accused.

She saw her daughter leaning against the wall and after questioning her, she contacted the police. Her daughter appeared to be angry and told her what the Chinese did to her.

The statement of the child Salima, Ex. "X", has been inadvertently admitted in evidence as it is not in the language in which the statement was made. It can be safely assumed that Salima spoke in Nauruan when she made the statement to Det. Sgt. Aingimea as she has given the entirety of her evidence in Court in Nauruan.

Therefore, there is only Salima's evidence to be considered. She has stated that the accused tickled her and woke her up and that he did not do anything else.

The prosecution has relied only on the act of the accused in tickling the child to bring home the charge of indecent assault. The circumstances in which the act was done has to be considered. There is no doubt that the accused was a frequent visitor to the house and was well known to the occupants, including Salima.

Salima's mother has stated in her evidence that the accused was a good friend of theirs. The incident occurred

on the night of Chinese New Year.

The accused has stated that he went to the house after the celebrations with two friends to collect some money owing to him for some work done. He went inside the house and saw two children sleeping in a room and took the child Salima in his arms and wished her a Happy New Year.

Indecent assault is an assault accompanied with some circumstances of indecency on the part of the accused towards the person assaulted. There is no evidence that the accused did anything else other than lifting the child in his arms or, according to the prosecution, tickling the sleeping child.

On an examination of the entirety of the evidence placed before this Court I have no doubt in my mind that something else other than the tickling of the sleeping child or her being carried and wished a Happy New Year occurred that night. But as to what prompted Salima's mother to contact the police and make a complaint against a good friend is not before the Court. The Court has to act on the evidence before it. There is no duty cast on the Court to embark on a voyage of discovery and ascertain as to what may have happened. In the absence of such evidence, I am of the opinion that the prosecution has failed to establish the charge of indecent assault and I find the accused not guilty on Count 1 and acquit him.

As regards Count 2, the fact that the accused has touched the child has been established. Therefore, in law it constitutes an assault and I find the accused guilty on Count 2. But taking into consideration the fact that the accused is a good friend of the family, and the circumstances in which it was done, I am of the opinion that this is not a case in which the accused should be subject to any sort of punishment. I, therefore, admonish and discharge him on Count 2.

R. L. DE SILVA
Resident Magistrate

18th March, 1977.