



## IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 43/2021

THE REPUBLIC OF NAURU

-V-

FOREMAN ROLAND

*Before: RM. Neil Rupasinghe*

*Prosecutors: Ms Francis Puleiwai*

*Defence: Mr Ravuanimasei Tagivakatini & Ms Francilia Akubor*

*Date of Judgment: 4<sup>th</sup> August 2023*

### JUDGMENT

**Catchword:** *Damaging property contrary to Section 201(a) and (b) of the Crimes Act 2016.*

1. The accused was charged with one count of Damaging property contrary to Section 201(a) and (b) of the Crimes Act 2016. The accused pleaded not guilty, and the matter was fixed for hearing Dpp Counsel Ms Francis Puleiwai, and Mr Ravuanimasei Tagivakatini filed written submissions, which was helpful.
2. The summary of facts of count one suggested the accused, on the 20<sup>th</sup> day of October 2021 at Denig District of Nauru, caused damage to a vehicle No: TT 1333 amounting to AUD 7,080.00 belonging to Manmohan Singh, and he was reckless about causing damage to the vehicle.

3. In supporting their case, the Prosecution called five witnesses Senior Constable Luke Agege (PW-4), Sergeant Jehu Ageidu (PW-2), Natasha Mau (PW-3), Sergeant Denlobendahn Botelanga (PW-5) and Manmohan Singh Mehra(PW-1). Further, the prosecution marked 27 documents, including photographs of the damaged vehicle, the place of the incident and withdrawal slips.

### **The Law**

#### ***"Section: 201 Damaging property***

*A person (the 'defendant') commits an offence if the person:*

*(a) causes damage to property belonging to another person, or to the defendant and another person; and*

*(b) is reckless about causing damage to the property.*

*Penalty: 5 years imprisonment"*

4. Therefore, this court would list the issues to be resolved in this matter as follows;

1] Whether or not the accused damaged the vehicle belongs to Manmohan Singh Mehra (the complainant).

### **Evidence**

5. PW-4, Senior Constable Luke Agege, stated that on 30<sup>th</sup> October, his team received a complaint about damaging a vehicle. He attended to the complaint with PW-2 and another officer and witnessed that the vehicle bearing registration number TT 1333 was damaged. When he arrived at the crime scene, no one except PW-3 and PW-1 stood about 100m away. He said that he had seen PW-1 before at the courthouse. He added that PW-1 told him he knew the accused as he used to appear before the court. The witness said that PW-1 was frightened and informed him that he saw the accused getting into his car, his wallet was missing, and he only wanted his phone with the accused.
6. However, the witness added that PW-1 did not mention damaging the car or how it happened. Then they went to the accused's place, called out the accused's name, and noticed that someone ran inside the house. They spoke to the accused's mother, who informed them that the accused was inside. They went to the accused, noticed he was drunk, and demanded the PW-1's phone. It was given, and PW-1 unlocked it and confirmed the ownership. Then they arrested the accused. Witness marked photos of damaged vehicle PEX-1 to PEX-9 and crime scene PEX-10 to PEX -14. The witness said that the vehicle crashed into a wall, and there was a crack.

7. In cross-examination witness said that he did not see damage to the car. But he relied on the words of the accused and PW-1. The witness confirmed that he never asked PW-1 not to charge anyone or change PW-1's statement.
8. PW-2 Sargent Jehu Ageidu testified that on 20/10/2021 night they received a report that the accused had attacked a car near Police Training College. He saw the damaged vehicle, but the accused was not at the crime scene but PW-1 and PW-3. He added that he didn't know the owner of the car. When the witness waiting at scene PW-4 with another went to the accused's house. Later PW-1 had come with the wallet and phone of the victim. PW-1, the victim, unlocked the phone before him. Then they went and arrested the accused for damaging the car. He added that the accused smelled alcohol. The witness recognised the photos of the car and the damages.
9. Natasha Mau -PW-3 Testified she used to work at utilities as security. On 20/10/2021, she was on the night shift. PW-1 came to her and asked to come with him as someone had damaged his car. She added that she went, saw the damaged car, and added there was no one except two of them. She recognised the marked photographs of the car and the crime scene. She further confirmed that she did not see the accused at the scene.
10. Sergeant Danlobendahn Botelanga testified as PW-5. He stated that he collected the documents, including photographs related to the case. He added that there are three police statements from the victim (PW-1). The first is about the incident, and the second is about the real story, as the victim was afraid when he gave the first one. The third one is about identifying the accused by looking at a photograph of the accused. The witness marked a photograph as PEX-21. However, this was not tendered, and due to photo identification witness proceeded to take a third statement. The witness identified the photographs of the car. He marked documents related to the cost of the damage, payment slip and bank details as PEX-22to25.
11. At the cross-examination by Mr Rauvanamesei witness said he got the documents from Multiculture. When he found that the first statement was false and mentioned it to PW-1, he asked him to give the second one. PW-1 replied that since he was afraid, he gave

the wrong story. The accused marked two statements of PW-1 as DEX-1 and DEX-2. I note that there is 18 days gap between these two statements.

12. PW-1 (The Victim) Manmohan Singh Mehra testified via audiovisual facility and stated that he used to work in the Judiciary of Nauru as a research assistant. Car registration TT 1333 was allocated to him by Multicultural as they employed him. On 20/10/2021, there was a message from a girl known to him asking to go around the island. The accused is the brother of the girl and was released from prison. He went out at 1.15 am and was waiting by the road. Then the accused knocked on the car window and asked whom PW-1 was waiting for. Then the witness replied that he was listening to music.
13. Witness added that the accused opened the car door, entered, and sat in the front seat. Then the accused asked for his phone, which he gave as he was scared as he thought it must be the girl's brother. The witness identified the accused. Then the accused asked to give \$500. When PW-1 said he didn't have that money, the accused asked to give the wallet, which he did. Then he was asked to go to the ATM and withdraw money. PW-1 agreed and went to Civic Center. PW-1 added that whilst the accused was waiting in the car, he withdrew \$300 and gave \$200. Then the accused asked to drop him. When the accused got off the car, he said, "You going around with my sister.." and bang, the door came front and picked up a stone and threw it into the windscreen. Then witness changed the gear, but the accused stood outside the car at the driver's side. Since he was panicked, the witness jumped into the front passenger seat and ran out of the car.
14. PW-1 said that even though he heard some noises, he did not see what happened with the car. Then he ran to the power station, where he met PW-3. Then both of them came to see the car. Then he noticed a police car was approaching his car as someone called the police. Then witness confirmed that police recovered the phone and his wallet from the accused.

### Analysis

15. Defendant suggested that the ownership is an element of Damaging Property. I agree with this in establishing that the accused is the sole owner of the subject property; as an absolute owner, it is a well-known legal principle that the owner has the right to do anything he wishes to his belongings. Power to destroy is a part and partial of ownership.

Establishing the accused's sole ownership of property in issue would create an absolute defence for an acquittal.

16. Therefore, it is crucial for the prosecution to establish that the accused does not possess any right over the property or that another owns it. Criminal liability will arise even if the accused co-owns the property. In the current matter, with the document marked as PEX-22, the prosecution established that the damaged car solely belongs to another person named "Caasi Shawnee Appi", and Defendant did not dispute it at trial.
17. Hence any defect in the identity of the owner in charge of the damaging property to determine the criminal liability of the accused is immaterial. Even if the owner's name is wrongfully mentioned in the charge, it has zero effect as the mentioned wrong name also falls under the class of the "OTHER PERSON." When interpreting the words of section 201 of the Crimes Act, "other person" has to be recognised as the sole owner or co-owner, in a wider sense.
18. However, the PW-1 had given 3 Statements to the police. According to 1<sup>st</sup> statement (DEX-1), The victim didn't know the accused. He failed to mention in DEX-1, the name of the accused or that he met the accused, gave him a lift, had a conversation with him in the car, and gave money to the accused; further, the accused attacked his car by smashing the windscreen and window in front of PW-1. In brief, nothing related to their encounter but stated that "*I saw someone driving my car towards power station. i chased the car but could not catch it*" in the 2<sup>nd</sup> Statement (DEX-2).
19. When the victim ( PW-1) was under cross-examination by Defendant's counsel, he explained that due to threats by The accused, he did not state real facts in his 1<sup>st</sup> statement DEX-1. Further witness mentioned the same in DEX-2: "Further to my previous statement, I want to tell now the truth of the incident which I previously did not tell out of threat and fear received from Forman." However, at trial, PW-1 said that due to the influence of a police officer named Luke (PW-4), he prevented him from mentioning facts. PW-1 agreed that he did not file a report about the police officer who said the accused would file a cross-complaint against him.

20. The victim is a qualified lawyer who used to work for the highest-ranking judges of the Nauru judiciary. Therefore even if he were prevented from mentioning that truth, he would have reported the officer involved, at least after making his 2<sup>nd</sup> Statement DEX-2, as he is responsible for laps, but there's nothing. The accused's family did not file a cross-complaint against the victim for trespassing even after PW-1 made the 2<sup>nd</sup> statement.
21. The time gap between DEX-1 and DEX-2 is 18 days. There was more than sufficient time to take action if the PW-1 feared harm by the accused. Further, it is impossible to think that the fear was on trough out this time as the matter was already before the law. Therefore I hesitate to accept PW-1's evidence as credible.
22. The only inference, I could draw in this matter is that someone had damaged a car used by the victim PW-1, as there is no acceptable evidence of identification of the accused. As per PW-4, Sinor Constable Luke, the accused, was arrested upon name given by PW-1. But on the contrary, PW-1 has not mentioned any name in DEX-1, which was made afterwards, creating huge doubt in my mind about identifying the person who committed the damage.

### Conclusion

23. Therefore, I give the benefit of the doubt to the accused for the above reasons. The accused is not guilty of one count of Damaging Property under Section 201(a) and (b) of the Crimes Act 2016, and I discharge the accused.
24. Prosecution has 21 days to appeal this decision.

