

IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 1536 of 1976

THE REPUBLIC

vs.

HUMPREY TATUM

CHARGE:

Driving under the influence of intoxicating liquor:
C/S 21(1) of the Motor Traffic Act, 1937-1973.

JUDGMENT:

The case for the prosecution is that the accused was detected driving whilst being under the influence of intoxicating liquor.

The prosecution has led the evidence of two police officers, Sgt. Moses and Police Const. Dekarube. According to Const. Dekarube, he was in his car on the day in question at about 12.00 p.m. proceeding towards Anetan and near the Anetan Football site, he passed an oncoming vehicle which he noticed was zigzagging. The driver of that car was the accused. He made a turn at the Ika Cinema and went after the accused. When he reached another cinema, he noticed a row of cars stopped on the road. He investigated the cause of the traffic block and found that the accused's car was parked at an angle. The accused was leaning on the door of his car and he went up and spoke to him. He informed him that he was going to book him for zigzagging on the road and that he was arresting him. He noticed that the accused was drunk and he had to help him into his car. Although the accused could walk, he was trying to fall. He rang the police from Adeang's place but they took a long time to come. He took the accused in his car to the police station. On the way, he met the police and handed the accused to Consts. Emerson and Deiye.

As to the condition of the accused when he was brought to the police station, there is the evidence of Sgt. Moses, who was on duty as the Desk Sergeant. According to him the accused was brought by Const. Deiye and Dageago as he was suspected to be driving under the influence of intoxicating liquor. He informed the accused as to the reason why he was brought and that he had the right to be examined by a doctor. The accused did not wish to be examined by a medical officer. He noticed

that the accused could not stand properly and he was swaying and staggering while walking. He got the smell of intoxicating liquor from his breath and whilst being interviewed, his head sometimes dropped down.

The accused has given evidence and according to him, he was stopped by a police constable about midday on the 27th December, 1976. He had finished duty at 6.00 a.m. He had worked from midnight the night before. The police officer got off his car and pulled him out towards his car and took him to Diema's place where he used the telephone. The police officer did not say anything. After the telephone call, he said he was being apprehended because he blocked traffic. He was not allowed to get back to his car. On the way, they met a police car and he was handed over to the police officers. At the police station, he was told that he had the right to be examined by a doctor but no doctor was available. He was then locked up till 9.00 a.m. the following morning and he did not know why he was locked up. He had taken only three beers that afternoon and it did not affect him. Both Const. Dekarube and Sgt. Moses were telling lies.

The defence has produced the evidence of another witness, Adam, who has stated that the accused's car was not blocking traffic and there were no cars behind.

The evidence of witness Adam does not touch the case as he has not stated at what stage he saw the car and at what stage he noticed that there was no traffic behind.

The evidence of the accused that he drank only three beers and was not affected cannot be accepted in the light of the evidence tendered by the prosecution. There is the evidence of the two police officers that the accused was staggering and his breath smelt of liquor and that while being interviewed, his head was falling to a side.

Const. Dekarube's evidence that the accused was zig-zagging on the road indicates the condition of the accused when he was arrested. There is no evidence other than the accused's own version of the incident and the submission of his Counsel that the accused was sleepy at the time of the arrest. All the evidence indicates that the accused was more than under the influence of intoxicating liquor. Apart from this, I am unable to accept the evidence of the accused, who is a district constable, that he did not question the police as to why he was being arrested but was satisfied in thinking as to the probable reason for the arrest.

It is not necessary for the prosecution to prove to what extent the accused was under the influence. The degree of being under the influence could be mild or great. The moment the prosecution has placed before the Court evidence to prove that the accused was under the influence, the prosecution has discharged its burden. In the instant case, it is in evidence that the accused was first stopped because he was zigzagging on the road and subsequently, the police officers observed the state of intoxication of the accused. Counsel for the defence has submitted that the lack of sleep may have affected the accused. Considering the circumstances under which the accused came to be apprehended and if his evidence were to be accepted that he went off duty at 6.00 a.m. in the morning, which I see no reason to disbelieve, it may have some effect on the accused but the lack of sleep could not have brought about the symptoms as described by Const. Dekarube namely, that the accused was drunk and that he had to be helped into his car and that he could not walk as he was about to fall. Similarly the Desk Sergeant has observed that the accused could not stand properly and he was swaying and staggering whilst walking. All these point to one fact, and one fact alone namely, that the accused was under the influence of intoxicating liquor.

I am unable to agree to the submission made by Counsel for the defence that there is no evidence that the accused was incapable of driving due to liquor and therefore, the prosecution has not established its case. The section itself is quite clear and there is no duty cast on the prosecution to prove to the Court that due to the fact that the accused was under the influence of intoxicating liquor, his driving was impaired. The prosecution has merely got to adduce evidence that the accused drove whilst being under the influence. The degree of intoxicating is not relevant. Neither does the fact that the accused was in full control of the motor vehicle. Even if I were to accept the submission made by Counsel for the defence, the facts in this case clearly reveals that the accused was not in proper control of his vehicle as he was zigzagging on the road, and, therefore, his driving was impaired.

I, therefore, accept the evidence given by the two prosecution witnesses as they corroborate each other as to the state in which they found the accused at the time he was apprehended and there is no doubt that on the evidence, the accused was under the influence at the time he was detected. I reject the evidence given by the accused as his version of the incident is most improbable.

I hold that the prosecution has proved its case beyond all reasonable doubt and I find the accused guilty and convict him.

24th January, 1977

R. L. DE SILVA
Resident Magistrate