

IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 1533 of 1976

THE REPUBLIC

vs.

JACKSON AGEDORI OLSSON

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 collided with a car opposite the Nauru General Hospital at about 7.30 p.m. on the night of 22nd December, 1976 and when the police went to the spot, they found the accused under the influence of intoxicating liquor.

It is in evidence that the minimoke driven by the accused smashed into the rear of the car driven by Eduar on the night in question.

The prosecution has led the evidence of Sgt. Perry Kapua, who went to the scene of the accident and found the accused in his minimoke, spoke to him and asked him to come along with him. Witness Kapua noticed the accused staggering when he got off his car and he got a strong smell of intoxicating liquor. The accused's speech was slurred and he observed that the accused was under the influence. He then informed the accused that he was arresting him for driving under the influence. The accused was also informed of his right to be examined by a doctor but the accused refused to be examined by a medical officer.

The prosecution has also tendered the statement of the accused taken by Sgt. Harris. The statement is marked Ex. "X" and its translation, Ex. "X-1". The statement is an account of how the accused came to collide with the car in front.

It is not necessary for me to come to a finding as to whether the accused was in fact the cause of the accident and whether any blame should attach to him. That the accident did occur has not been disputed by the accused. According to him, he applied his brakes but the car did not stop and he bumped into the rear of the front car. It was raining at the time and visibility was very poor. The accused has stated in his evidence

that he had three cans of beer that day and that he was not under the influence. His position is that even if he consumed 10 cans he would not be under the influence of intoxicating liquor. Whatever maybe the drinking capacity of the accused, there is the strong evidence of Sgt. Kapua, a police officer of nearly ten years experience in the Nauru Police Force, whose observation of the accused cannot be easily brushed aside. He has stated that the accused was staggering when he got off his car; that he got a strong smell of intoxicating liquor; and that the speech of the accused was slurred.

I am unable to agree with the submission made by Counsel for the defence that prosecution must prove that the accused had no proper control of his vehicle. 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 intoxication is not relevant. Neither does the fact that the accused was in full control of the motor vehicle. The circumstances of this case clearly indicate that at the time of the accident, conditions on the road were far from favourable. It was raining; there were puddles of water; visibility was poor and when the accused saw the car moving slowly in front, his brakes failed when he applied them. It could well be that the accused was not at fault as regards the accident but the fact remains that there is cogent evidence tendered by the prosecution that when the police arrived at the scene, they found the accused under the influence of intoxicating liquor. I, therefore, hold that the prosecution has proved beyond all reasonable doubt that on the night in question at the time of the accident, the accused drove his car whilst being under the influence of intoxicating liquor and I, therefore, find him guilty of the charge and convict him.

25th January, 1977

R. L. DE SILVA
Resident Magistrate