

IN THE DISTRICT COURT OF NAURU
Criminal Jurisdiction

Criminal Case No. 20 of 1977

THE REPUBLIC

vs.

KEN ROLAND

Charges:

1. Driving under the influence of intoxicating liquor: Contrary to Section 21(1) of the Motor Traffic Act, 1937-1973.
2. Negligent driving: Contrary to Section 19(1) of the Motor Traffic Act, 1937-1973.
3. Failing to comply with directions given by members of the Nauru Police Force: Contrary to Section 16(1)(h) of the Motor Traffic Act 1937-1973.

JUDGMENT:

The case for the prosecution is that the accused, whilst driving under the influence of intoxicating liquor, failed to comply with directions given by a member of the Nauru Police Force on the 16th January, 1977 and drove in a negligent manner.

According to Sgt. James Harris, he left the police station in a police car in the company of R. Alik and G. Caleb and they were accompanied by two outriders, Consts. G. Hiram and Allan Gaiyubu. Inspector Olson was following in a police car. They were going to Nauru House to escort the King and Queen of Tonga. Near the No. 1 Cantilever, a dark-green sedan was travelling in front zigzagging on the road. The two outriders tried to overtake the car and blew their horns but the car in front blocked their path. Near the Aiwo bridge, Const. Allan signalled to them to overtake. When they came up alongside the car Const. Alik switched on the siren and the car swerved to a side, left the road and drove on to a side track. The two outriders went after him but was unable to catch the driver. They returned to the scene and asked Gordon Hiram who the driver was and he said it was the accused.

Having gone to Nauru House, when they were escorting the King and Queen of Tonga, he saw the same car parked on

the road opposite the old Post Office. He saw that the driver was the accused. After dropping the Royal party at State House, they went in search of the accused and near the Nauru General Hospital, he saw the accused come in the opposite direction. He followed the car as it drove into the hospital yard and stopped beside it. He saw the accused get down from the car and he asked him to accompany him to the police station. He informed the accused of the charge and the accused requested to be examined by a medical officer. He informed him that it was not necessary for him to be examined as there were sufficient witnesses. The accused was swaying, his speech was slurred and he got the smell of intoxicating liquor. He has been a member of the Force for nearly 18 years and has seen similar cases.

Sgt. Harris has admitted in his evidence that the accused requested to be examined by a medical officer and that he informed him that it was not necessary to be examined as there were sufficient witnesses.

The request made by the accused was under Section 21(4) of the Motor Traffic Act 1937-1973. The Section is as follows:

"Any person who is arrested for an offence under this section shall be entitled, upon request made by him on his behalf, to be examined by a medical examiner nominated by him and where any such request is made, the arresting officer shall afford reasonable facilities for the holding of the examination."

The accused has been denied this right by the police. It is quite clear that irrespective of the degree of intoxication that the police officer observes in an accused, he has no alternative but to afford all facilities for the holding of an examination if an accused makes a request for a medical examination. In my view, the fact that the accused was not examined by a medical practitioner because the police officer concerned erroneously thought that in cases where there is sufficient evidence it is not necessary, has resulted in the best evidence not been placed before this Court. The observation of an experienced police officer is acted on by the Court in the absence of a medical report and in this case there has been a denial of the right of the accused to be so examined.

I am constrained to observe that Sgt. Harris did exceed his rights as a police officer and had no authority whatsoever to deny the accused his fundamental right under the relevant section to be examined by a medical officer. The observations

of Sgt. Harris as regards the state of intoxication in which the accused was may be perfectly correct, but I am inclined to take the view that it would be unsafe to act on such evidence in the absence of the best evidence that could have been placed before the Court by the prosecution. I, therefore, find the accused not guilty on Count 1 and acquit him.

The next prosecution witness, Sgt. Tannang, has given evidence as regards another incident that occurred when the Royal party was on its way to State House. This incident occurred near the air terminal when the accused tried to overtake the party. According to Sgt. Tannang, he was in a police car in the rear of the Royal party and near the air terminal, his attention was drawn to a light of a car approaching from behind. The vehicle blew its horn and started to drive alongside. When it came parallel to his car he yelled to the driver of the vehicle to stay behind. The vehicle then slowed down and followed behind. At that time the blue flash of the police vehicle was on. The driver of the car was the accused. The accused kept trailing behind blowing his horn all the way and he instructed his driver to block the passage of the accused if he tried to overtake. The accused tried to overtake two or three times but was prevented from doing so. The accused followed blowing his horn till they reached the junction going up to the Government Settlement.

According to Const. Gordon Hiram, who was one of the outriders, he could not overtake the car in front because it was on the middle of the road. Near the Cantilever he gave the signal to the police car to overtake. He did not recognise the driver of the vehicle. When he was escorting the King and Queen of Tonga he saw the same car again. He had stated to the police that the driver was the accused.

Witness Agir has stated in his evidence that on the day in question at about 3.00 p.m. he was in the company of the accused and two others drinking in Anibare District. After they finished one bottle of whisky he went to sleep and when he woke up, the other two bottles were empty. After that they went for a drive and he noticed the accused trying to overtake a police vehicle in front but could not do so as they were blocked. He noticed the blue flash of the police car. He thought it was the procession of the King and Queen of Tonga.

The accused has denied that he was under the influence or drunk. He has, however, admitted that he tried to overtake the cars but he had no intention to annoy any person.

As regards Count 2, there is the evidence of Sgt. Harris and Gordon Hiram that the car in front was travelling on the middle of the road. Sgt. Harris stated that it was zigzagging. There is no doubt that it was the accused who was driving the car at that time as he was recognised by Const. Gordon Hiram. I accept the evidence of Sgt. Harris and Const. Hiram. I am, therefore, satisfied that there has been a breach of the ordinary duty to take reasonable care for the safety of other persons using the road. I, therefore, hold that the prosecution has proved Count 2 beyond all reasonable doubt and I find the accused guilty and convict him.

It is clear on the evidence of Sgt. Tannang that the accused failed to obey his instruction, namely not to overtake the Royal party. The accused in keeping back and trying to overtake again two or three times clearly disobeyed a direction given by a police officer. It may have been the intention of the accused not to annoy any person but on the evidence there is no other finding that the Court can reach other than that the accused failed to comply with the directions given by Sgt. Tannang. I, therefore, hold that the prosecution has proved Count 3 beyond all reasonable doubt and I find the accused guilty and convict him.

R. L. DE SILVA
Resident Magistrate

1st March, 1977.