

IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 29 of 1978

THE REPUBLIC

v.

TITAN PALSISA ALIKLIK

CHARGE:

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

JUDGMENT:

The case for the prosecution is that on the 22nd of January, 1978 at about 3.00 p.m., the accused crashed into the fence that goes alongside the road opposite the spot where the planes are parked near the air terminal.

Const. Kepae has stated that on information received, he went to the scene of the incident along with two other constables and found the accused standing by his car looking at the bent post of the fence. He asked the accused whether it was he who drove the car into the post and the accused replied in the affirmative. He also asked the accused whether he hit the post and the accused replied saying "yes". He then asked the accused as to why he hit the post and the accused replied, "I did not see it". On being questioned further the accused admitted that he had been drinking. His eyes were bloodshot, was very dirty and when he looked into the car, he found a can of Courage beer which was half-full. The accused admitted that it was his liquor. At that stage he asked the accused to get into the police car and took him to the police station because he had been drinking and had an accident.

Dr. Bill, in his evidence, has stated that he tried to wake up the accused in Cell No. 1 in the Prison but the accused did not respond to his attempts. He has also stated

that he got the smell of intoxicating liquor and that the accused was fast asleep. From his experience, he came to the conclusion that that the accused was dead drunk. The medical report is tendered as Ex. "X".

The accused has given evidence and he has stated that after dropping a friend at the airport, he was going out on first gear when he found he could not put it into second gear. He leant forward and tried to fix the cable of the accelerator and at that stage, he realised he was off the road. He stopped the car and it stopped at the fence. One post was slightly slanting. Not long after the police came and arrested him and he was put in the police car. While being taken to the police station, the Constable started punching him and accused him of swearing at him. At the police station he requested a medical examination because he had consumed only 1½ cans of beer. He was taken to the hospital and later to the Golf Club in search of Dr. Bill. He slept in the Prison because he got a headache from the punch of the Constable and he does not know whether he was examined or not.

In cross-examination the accused has stated that his friend was drinking at Anibare but he was not in the mood and may have consumed one or two beers. When he was leaving the airport the accelerator got loose and he thought it could be fixed easily. He was not drunk although he had been drinking and he knew what he was doing.

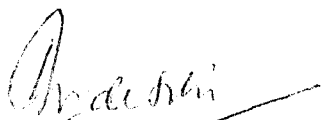
I have examined the evidence of the accused very carefully in order to ascertain whether he was in fact stating the truth regarding the accelerator getting loose. The defence has not placed before this Court any evidence as regards a mechanical defect in the car. In answer to Court, the accused has stated that he told the police officers who came that a cable broke in the car but this has not been put to the prosecution witness, Sgt. Kepae. Sgt. Kepae has not stated in his evidence that the accused informed him that he crashed into the fence as a result of

a cable snapping in his car. I accept Sgt. Kepae's evidence that the accused only stated to him that he did not see the post. The accused has further stated that he was assaulted whilst being taken to the police station. This, too, has not been put to Sgt. Kepae in cross-examination. Therefore, there is only a bald statement by the accused which is uncorroborated. I, therefore, reject his evidence that he crashed into the fence because the cable broke and the accelerator got loose and that he was assaulted on his way to the police station. The onus is on the defence to prove both facts, and this they have failed to prove.

Dr. Bill
According to Ex. "X-1", the accused was dead drunk and snoring away. Counsel for the defence has stated that the accused was asleep when Dr. Bill made an examination. Dr. Bill has sufficient experience to come to the conclusion that the accused was dead drunk as he was sleeping; there was a smell of intoxicating liquor; and he did not respond to attempts to wake him up. The accused would have this Court believe that he was asleep because he had a headache in which case he would have responded to Dr. Bill's attempts to wake him up. Therefore, I accept Dr. Bill's evidence that the accused was dead drunk.

I, therefore, hold that the prosecution has proved beyond all reasonable doubt that the accused was under the influence of intoxicating liquor at the time he was driving his motor vehicle and crashed into the airport fence.

23rd February, 1978.


R. L. DE SILVA
Resident Magistrate