

THE REPUBLIC V. FREDERICK TEBOUWA

JUDGMENT

The accused here is stand charged for driving whilst under the influence of intoxicating liquor. The accused admits he had been drinking before the incident but refutes the charge that he was driving under the influence of intoxicating liquor.

Suffice it to say, the prosecution has been able to indicate with the evidence of the three police officers including the desk sergeant, accused was observed with all the features of a person under the influence of intoxicating liquor, such as smelling of liquor on his breath, bloodshot eyes, and swaying. This aspect is not seriously contested by the accused too. In fact it is the say of the accused in his evidence, after having had some drinks of brandy with his friends, he had dropped his two friends at their place that afternoon and after that he was proceeding in the direction of Menen Hotel. He says he was driving slowly within the normal speed limit quite correctly and just as he observed the oncoming police car, he most unexpectedly was overcome with a sort of heavy dizziness and he started spitting blood and in the process, his car was very close to the oncoming police car and he immediately swerved his car to the left as he had no time to stop his car and with that nothing happened. He admits of the police car following him and that he stopped his car on being asked to stop by the police. In further support of this fact, that he was spitting blood, it is disclosed in the evidence of the prosecution witness, within minutes of the accused being locked up in the prison, he was found spitting a lot of blood in the prison and with that he was immediately shifted to the hospital at where he was examined and treated by Dr Bill. It was vehemently urged for the accused that because of the fact accused developed sudden dizziness and spitting of blood, there was little unsteadiness driving by the accused by crossing the other land of the road in front of the oncoming vehicle. In spite of it, the accused was able to avoid the collision with the police car by immediately swerving to the left to avoid it. Indeed except for this there was no abnormal way of driving by the accused as admitted by P.W.3. the police officer, who booked him with this charge.

With this it has to be seen how far the prosecution has been able to bring home the charge. It is specially ruled by His Honour the Chief Justice in D.P.P. v. Andrew Toneewani, Criminal Appeal No. 4 of 1980, which is further affirmed in Criminal Appeal No. 14 of 1980 in Donald Craggs v. D.P.P., that in order to prove the offence of driving a motor vehicle under the influence of intoxicating liquor, the prosecution must prove intoxication, likely to have had a substantially detrimental effect on driving skills. In the case on hand, it is in evidence that the accused was driving in normal speed and there was no abnormality in the manner of

his driving either before the incident and after that. The only fact indicated in prosecution evidence is that the accused car nearly collided with the police car. It is explained by accused that he at once, on observing the closeness of the two vehicles, he swerved to the left. This aspect is admitted by the police witness too, who also appear to have swerved the police vehicle to the other side. This by itself, with the reasonable explanation is not a very serious fault. It is not so high as to indicate the recklessness of serious intoxication. The accused has clearly explained how it all happened by the sudden attack of dizziness and spitting of blood from his mouth. The fact that the accused was not well is further indicated by his spitting of blood at the prison as he was locked in there. The medical officer, Dr Bill, who examined and treated the patient (accused), speaks to his report at Exhibit 1. He certified accused was moderately drunk and he was co-operative and all that. The spitting of blood appears to come up with such persons as accused who suffers from attack of fits on their consuming, irrespective of the quantity, of hot liquors. Accused admits that he had consumed brandy that day. It was in the afternoon. This indeed is a reasonable explanation by the accused. With the evidence of the facts placed before Court, it is not proved beyond reasonable doubt that the driving skills of the accused had been impaired substantially and that it had detrimental effect on his ability to drive. In short, the prosecution has failed to bring home the charge beyond all reasonable doubt and accordingly, I acquit the accused from the charge giving him the benefit of the doubt.

G.P. Jagadeesh,
RESIDENT MAGISTRATE
23/3/81