

IN THE DISTRICT COURT OF NAURU

CRIMINAL JURISDICTION

CRIMINAL CASE NO:37 OF 1982

THE REPUBLIC

v.

TITANA TAUMAFU

R.M.
Chad. J. N. J. K.

A police patrol party in a police vehicle was travelling anti-clockwise on the main island road at about 6.45 P.M. on 28th December 1981. Const. Malie Botelanga and Const. Toddy Hiran were on duty in the vehicle. They crossed Yaren district and while they were near Deage's house in Meneng District, they happened to see a motorcycle coming from Government Settlement road. It did not stop at the intersection (as it should be) and turned right on the main island road towards Yaren. The police party made a U-turn and followed it. The motorcyclist was travelling at a speed of 90 KM/hour in a zigzagging manner. At Baguga's place the motorcyclist was seen overtaking a car and at the same spot another car was coming from opposite direction and while overtaking he passed between these two cars. The police kept on following him. The motorcyclist was turning into airport road without giving any right-hand signal when he was stopped by the police near the end of air strip. The officers noticed that the motorcyclist the accused had been drinking. He was warned that he had been driving under influence. He was taken to police station where he was produced before Desk Sgt. Const. Vincent Scotty. He denied that he had been drinking and requested to be examined by two doctors. The police rang them up but nobody responded. He was then detained. This resulted in prosecution of the accused on four counts for driving whilst under influence of liquor, contrary to sec. 21(1) of the Motor Traffic Act 1937-73 (hereinafter called 'the Act'), dangerous driving, contrary to sec. 19(1) of the Act; speeding, contrary to sec. 28(a) of the Act and driving without a number plate, contrary to sec. 23(1)(c) of the Act.

Charges were read over and explained to the accused. He pleaded guilty to count 2 & 3 u/s 19(1) and 28(a) of the Act respectively and not guilty to count 1 & 4 u/s 21(1), 23(1)(c) of the Act respectively. Prosecution examined three witnesses. P.W.1 Toddy Hiran and P.W.2 Malie Botelanga are the concerned Constables who formed the police patrol party

and gave evidence of the facts hereinbefore stated. P.W.1 also stated that his conclusion that the accused was under influence of liquor was drawn from the smell of liquor and the look on the face of the accused. P.W.2 added that the accused while overtaking the car nearly hit it but managed to overtake it. He was stopped and told by Const. Toddy that he was being booked for driving whilst under influence of liquor. At that time P.W.2 observed that, while sitting on his motorcycle, the accused nearly fell off. He too detected smell of intoxicating liquor. P.W.3 Const. Vincent Scotty was the Desk Sgt. that evening when the accused was brought to him by P.W.1 and P.W.3. He noted that the accused was staggering and started leaning at the desk. His breath smelt of liquor, he had bloodshot eyes and his speech was slurred. He requested to be examined by Dr. Santos and Dr. Mario. The witness rang them up and there was no response. He was then informed of his offence of driving under influence and detained.

The accused examined himself as D.W.1. He stated that since that morning he had been playing volleyball and pools. The game finished at about half past 11.00 A.M. and then he and other friends had lunch and at about 1.00 P.M. they again started the same games between blocks 82 and 83 in Location. It was a group of Tuvaluans competing. The game finished after 5.00 P.M. and then he alongwith his friends went to their block 16. He went into his room and had a shower and thereafter he visited his friend Samuel in block 17 from whom he borrowed the motorcycle. He drove to his cousin Poale Benny in Government Settlement. He was there about 15 minutes. She requested him to go and buy some raw fish. He started on the motorcycle, reached the intersection of Government Settlement road and island road. He stopped for a few seconds and, when he did not see any car around, he turned right. Before he could reach Panzer foot ball ground, he saw a car ahead of him, which he overtook. After going some distance he could see a police car following him and also another car coming from opposite direction. By that time he had reached airport road intersection. His speed was around 30 miles / hour. He gave signal to turn right, decreased speed by changing gears and then turned right into airport road and then he was stopped by police who alleged that he was speeding. He was brought to police station

where he asked for medical examination, The police then replied that they rang up two doctors but they were busy. When he asked for his lavalava, he was punched by a policeman. He denied that he had been drinking liquor that day. Another defence witness in support of what the accused said is D.W.2 Iopu Tila residing in room No: 27 of block 16 in the Location. He too claimed to have participated in the game that morning and afternoon in celebration of the approaching X-mas. He certified that no alcoholic drinks were taken because it was against rules nor did he see the accused taking any intoxicating drink.

The last witness is D.W.3 Puale Benny who deposed that the accused visited her at her flat in Government Settlement that evening sometime after 5.00 P.M. She did not notice anything unusual about him nor it looked that he had been drinking. He did not take any drink at her place.

During the course of his submissions the Ld. Counsel for the accused stated that the accused was aware of what had happened because he has stated in his evidence he felt cold in the cell and asked for his lavalava. According to him either it was a misunderstanding of the police that they thought that the accused was under influence of liquor or this charge was deliberately brought against him in order to justify his detention. He referred to the evidence led by the defence about no drinks have not been served during the games. With reference to testimony of D.W.3 it was contented that she is a reliable witness being a senior air hostess who in the course of her duty serves liquor to passengers and, hence, is capable of knowing what a person under intoxication looks like. The Ld. Prosecutor with reference to the tests *laid* down in Criminal Appeal No: 5 of 1981 contended that the conduct, appearance and manner of driving of the accused fully established that he was under influence of liquor. He also referred to contradictions in the defence evidence.

u This is a case of oath against oath. The defence case is of total denial of having consumed liquor. Dangerous driving and speeding is admitted by the accused and he has pleaded guilty to it. It is only to be seen whether this dangerous driving and speeding was done under influence of liquor. I would deal with the defence evidence first because

the defence case is of absolute denial of any consumption of liquor. It is to be seen whether the testimony of defence witnesses is consistent and in conformity with all the circumstances of the case. D.W.1 is the accused himself who denies having consumed any liquor at any stage that day. His evidence is that the game finished after 5.00 P.M. and thereafter he alongwith his friends went to single quarters in block 16 and after that he went to his own room, took shower, visited his friend Samuel in block 17, borrowed his motorcycle and then he went to visit his relation D.W.3. Now, this time factor assumes importance in order to judge the veracity of defence witnesses. If the game finished after 5.00 P.M. (as has been stated emphatically by the accused in his statement it would certainly take atleast half an hour and most probably about three quarters of an hour for him to go to his room, take shower, go to another block, borrow the motorcycle, drive to Govt. settlement and reach the residence of D.W.3. Looking into the statement of D.W.3 Poale Benny I find that the accused, according to her, visited her sometime after 5.00 P.M. These two things are inconsistent. She was further questioned about it in cross examination and she again gave a definite reply that it was past 5.00 P.M. but not 5.50 P.M. From what the accused has stated, it would not be possible for him to reach there so early as stated by D.W.3. The accused was seen on the road by police constables at intersection of Govt. Settlement road and the island road at about 6.30 or 6.45 P.M. as stated by P.W.2 and P.W.1 respectively. According to D.W.3 the accused remained with her for about 15 minutes only. The accused himself has stated that he was there only for 15 minutes. The entire length of Government Settlement road is hardly five minutes drive. If the timing given by D.W.3 is correct, the accused would have crossed Govt. settlement road near about 5.45 p.m. and not 6.30 or 6.45 p.m. The time given by P.W.1 and P.W.2 in their evidence has not been assailed in cross examination. No question has been put to either of them that the time of their having first seen the accused is not correct. This is the state of evidence with regard to the visiting time /the accused so far /of as D.W.1 and D.W.3 are concerned. But D.W.2 has something entirely different to say. He stated in his evidence that game finished at 3.00 P.M. This is what he stated in examination in chief. He was put a definite question in cross-examination and he replied that he was very sure that the

game finished at 3.00 P.M. This statement contradicts the statement of D.W.1 with regard to the time when the game finished. The testimony of D.W.2 becomes further irrelevant because he did not see the accused after 3.00 P.M. There is a long gap between 3.00 P.M. and 6.30 P.M. and so D.W.2 is not a competent person to say about non-consumption of liquor by the accused after 3.00 P.M. and has actually not said so. At best, his statement to that effect can cover only the time between 9.00 A.M. and 3.00 P.M. He has not ruled out the possibility of liquor being available around the place where the games were being played. He was put a question to that effect and he denied knowledge about it. He could not deny at all together. The defence case is that it is customary not to drink alcoholic drinks on such occasions. It may be a custom but there are many rules which are observed only in breach. D.W.3, according to defence, should be relied upon because of her being a senior hostess in Air Nauru. But it should also be borne in mind that she is an interested witness being a cousin of the accused. Then there is another circumstance that during his visit the accused was never so near to her to enable her to smell liquor from his mouth.

As against this contradictory and doubtful evidence, there is positive evidence of witnesses being police officers who have had the requisite experience of judging whether a person is driving under influence of liquor. Professional experience has to be taken into account. P.W.1 has stated that the accused was zig-zagging. He had not stopped at the intersection earlier. He went past fast while overtaking a car and at the same time crossing an oncoming car. He went between these two cars. He smelt of liquor. The smell and look on his face led P.W.1 to believe that he drove under influence. Suggestions were put to him in cross examination and he emphatically denied. The accused has admitted and pleaded guilty to the charge of speeding. The defence has not been definite about its case because, in spite of the plea of guilty the question was put to P.W. 1 that he was driving at a speed of 35 miles. P.W.1 denied it. The accused himself has stated in his evidence that he was driving at a speed of 30 miles. This is inconsistent with his plea itself. P.W.1 denied that he gave a right-hand signal while turning into airport road. P.W.2 observed that the accused nearly fell off

while sitting on his motorcycle and also smelt of intoxicating liquor. He has also stated that the motorcycle did not have a number plate. Then there is testimony of P.W.3 who stated about his own observation when the accused was brought to the desk. It was contended by the defence that P.W.1 and P.W.2 did not say anything about his speech being slurred and about his having bloodshot eyes. I would not consider this an improvement or embellishment for the simple reason that the Desk Sgt. is duty bound to have a closer look and thorough observation before detaining a person for driving under influence. Moreover, it is not necessary that every person observes an offender in an identical manner. The Desk Sgt. is supposed to take a better look at the person brought by other officers before detaining him. I find no infirmity in the prosecution evidence on this ground. I rely on their testimony. They had no grudge or illwill so as to falsely implicate the accused.

Speeding can also be a direct result of intoxication. When a person is inebriated on account of consumption of liquor, he is most likely prone to accelerate. Not that a sober person would not act like that. But a person under influence of liquor would most certainly do so. Same holds good regarding dangerous driving. It is on account of natural reflexes not working properly as a result of consumption of alcohol. Speeding and dangerous driving are events which fit in more with drunken driving. What I mean to say is that these two manners of driving are a positive indication of being under influence of liquor. Besides this, it is also in evidence that he was zig-zagging while driving and that too is attributable to being under influence of liquor. I agree with the prosecution that the conduct, appearance and the manner of driving were such that they indicate his loss of control of the vehicle and substantial deterioration of driving skill on account of consumption of liquor. There is direct nexus between such type of driving and influence of liquor.

I find the case proved on count 1 and 4 and convict Titana Taumafa accused u/s 21(1) and 23(1)(c) of the Act. He is further convicted u/s 19(1) and 28(1) of the Act on his own plea.

July 9 1982

(S.C. CHATURVEDI)
RESIDENT MAGISTRATE

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