

IN THE DISTRICT COURT OF NAURU  
CRIMINAL JURISDICTION  
CRIMINAL CASE NO: 168 OF 1982

THE REPUBLIC

v.

DRIP NENEIA

THURSDAY 1ST JULY 1982 AT 9.00 A.M.

Accused not present. Issue warrant for 8.7.82 - 9.00 A.M.

S.C. Chaturvedi  
1.7.82

THURSDAY 8TH JULY 1982 AT 9.00 A.M.

Charges read over and explained to the accused. Pleads not guilty on both counts.

To come up for trial on 9.7.82 - 2.00 P.M.

S.C. Chaturvedi  
8.7.82

FRIDAY 9TH JULY 1982 AT 2.00 P.M.

P.W.1 Tyson Agir Constable 1st class, Nauru Police, (Christian)  
duly sworn:-

I know the accused. I came across the accused on 26th June 82 at about 9.20 P.M. in Location in police car. I was accompanied by Const. Norie Tebona. We were patrolling in that area. We saw the accused between block 13 and 14. He was drinking. We know that he was disqualified from drinking under Court's Order. We approached him and booked him. I had seen him drinking Foster beer. He was smelling of alcohol. He was detained. He was uncooperative. We asked him to get into the car but he would not. We persuaded him to get into the car.

X X X (by the accused)

The accused was not arrested while participating in a wedding feast. It is incorrect that the accused had no drink with him. It is incorrect that he was only dancing and not drinking. I actually saw him drinking.

Question by Court

Was he drunk?

Answer

He had been drinking but not dead drunk. He was drunk.

Reexam

I was the Desk Sergeant that day.

S.C. Chaturvedi  
9.7.82

P.W.2 Norio Tabona, 1st class Constable, Nauru Police, (Christian) duly sworn:-

On 26th June 1982 I accompanied Const. Tyson at about 9.20 P.M. We were in China town. I saw the accused between two blocks. I have forgotten numbers. It was in N.P.C. Location. The accused was seen by me drinking beer from can.

X X X (by accused)

It was not during dancing that he was booked. He was between the two blocks. He was drunk. Did not take him to doctor. Brought him to police station. He was not dancing when he was arrested. He was drinking. He was not arrested from wedding feast. He was drinking alongwith others. They were sitting there - four or five persons.

S.C. Chaturvedi  
9.7.82

P.W.3 Mr. Q. Diema, Clerk of Courts, District Court, Nauru (Christian) duly sworn:-

In Cr1. Case No: 56 of 1982, the accused was debarred by District Court vide judgment dt. 19th March 1982. I have got the record of the case before me. He was debarred for 6 months. The original order is here. Ex. P1 is the order and it bears signature of the resident Magistrate

X X X ing

S.C. Chaturvedi  
9.7.82

Mr. Aingimea

That is the case of prosecution.

Accused

I want to give evidence.

D.W.1 Drip Neneia accused, Christian, duly sworn:-

At that time there was a wedding of gilbertese couple. I participated in the wedding. It was a Reception. We were working and fixing up food on the long table. The police arrived at about 10.00 P.M. I was not drinking. I did not drink at all. When people had eaten, we cleaned the place and then band started. People started dancing. I was standing there but not drinking. When the police came I was dancing but not drinking. Police took me to police station. I had danced with bride.

X X X (Mr. Aingimea)

I am a shy person. I remain shy when I drink. Bride was related to me and so I danced with her. It is incorrect that I had overcome shyness that night because I had taken beer. It is incorrect that I was drinking. It is incorrect that I have told lies.

Q. (by Court)

Why the two police officers have said that you were drinking.

A. I do not know why?

S.C. Chaturvedi  
9.7.82

Accused

No other witness.

S.C. Chaturvedi  
9.7.82

JUDGMENT

P.W.1 and 2 have given positive evidence that the accused was seen drinking by them on the night in question.

P.W.3 has established in his evidence that the accused was debarred from drinking by the District Court for a period of 6 months vide order dated 19th March, 1982. Ex. P1 is on record. What P.W.1 and 2 saw was something that happened before expiry of 6 months' prohibitory period.

P.W.1 and 2 are definite that he was drinking. The accused himself has denied the allegation. P.W.1 and 2 have even named the brand of the drink they saw the accused taking.

They have not been assailed in cross-examination in any way. There are no discrepancies.

The question is whether they should be relied upon. The answer is only in affirmative. They have no reason to implicate the accused falsely. A court question was put to the accused why they so alleged if he had not been drinking. The accused, in reply, only said that he did not know. No illwill or grudge is alleged against either of the witnesses. P.W.1 said he was aware of the prohibitory order. That must be the reason he noticed him drinking. I rely on the testimony of P.W. 1 and 2 and reject the uncorroborated evidence of the accused. He could not get even a single person from large number of guests at the wedding who could have supported him.

The offence of count 2 is proved satisfactorily. Count 1 lacks proof as the witnesses have not been consistent in showing his drunkenness. Merely saying that he was drunk is not enough. There must be some evidence giving definite indication of drunkenness. Drinking in public and being drunk in public are two different things. This charge is, therefore, not brought home to the accused.

He is acquitted of the first count but convicted of the second count.

S.C. Chaturvedi  
9.7.82

Prosecution

Submit previous convictions.

Court to accused

This is your second offence of this type. Why you should not be sent to prison?

Accused

Nothing to say.

O R D E R

The accused has a bad criminal record and also has been committing offences pertaining to drinking. He was debarred from drinking on 19th March 1982 but he flouted that order in May 1982 and was fined. He again flouted the same order in June 1982 which is the subject matter of this case. He,

therefore, needs a different treatment this time. I, therefore sentence him to undergo two months' imprisonment.

(S.C. Chaturvedi )  
9.7.82

Accused

I want to appeal.

Prosecution

He should not be released on bail pending appeal. If he is enlarged on bail he would commit similar offences again just as he has done in the past. He flouted Court's prohibitory order regarding driving and also regarding drinking.

O R D E R

Intention to present an appeal is recorded. Prosecution's objection regarding releasing him on bail is weighty and, hence, sustainable. It would not be proper to release the accused on bail.

( S.C. CHATURVEDI )  
9.7.82