REPUBLIC OF NAURU
SUPREME COURT
CRIMINAL APPEAL NO. 15 OF 1981

DIRECTOR OF PUBLIC PROSECUTIONS
v.
BENNY HARRIS

JUDGMENT

This appeal is brought by the Director of Public Prosecutions against the acquittal of the respondent on a charge of driving a motor vehicle whilst under the influence of intoxicating liquor. The evidence for the prosecution was given only by police officers; that is to say, there was no medical evidence of the degree of the respondent's intoxication. Their evidence was that the respondent was riding his motor cycle along the road at 4.30 a.m. and its rear light was not working. The respondent zig-zagged when turning right off the main circum-insular road into the road leading to Buada. But it was the absence of the rear light, not the brief zig-zagging which caused the police officers to follow the respondent and stop him. His manner of riding his motor cycle was normal apart from that brief incident of zig-zagging as he turned. After being stopped the respondent almost fell when he was putting the motor cycle onto its stand. His breath smelled of alcohol. At the police station the acting desk sergeant observed that the respondent was smelling of alcohol and swaying and looked sleepy. The respondent gave evidence that he had been drinking alcohol from 12 noon until 8 p.m. on the previous day but had then gone to sleep and had woken at 3 a.m. and was on his way home when arrested.

The learned magistrate carefully examined the evidence. He noted, correctly, that the degree of intoxication which the prosecution had to prove was such as would be likely to have a substantially detrimental effect on the respondent's driving skills (Criminal Appeal No. 4 of 1980, Andrew Toneewani v. The Director of Public Prosecutions). In many cases such a degree of intoxication is proved by the manner of driving. The learned magistrate rightly commented that that was not so in the present case. It was clear that there was some degree of intoxication but the question to which

care - was whether the evidence of the three police officers as to the smell of alcohol on the respondent's breath, the fact that he nearly fell over while putting his motor cycle on its stand and the fact that he was swaying and looked sleepy at the police station was sufficient to establish beyond reasonable doubt the degree of intoxication required to enable him to find the respondent guilty. He decided that it was not.

The Director of Public Prosecutions has urged upon this Court that the learned magistrate was wrong and that the evidence was amply sufficient to prove the requisite degree of intoxication. With respect, I do not agree with him. In cases where the manner of driving is normal, the accused person is not helplessly drunk and there is no evidence of the quantity of liquor consumed, the District Court has a most difficult task to perform. Rarely, if ever, is medical evidence available to assist the magistrate in his task; nor is there evidence of breath analysis. As the learned magistrate has pointed out, the offence is serious; it usually carries a sentence of imprisonment on conviction. If he has any reasonable doubt, he must acquit. That was the position in the present case and I am not prepared to hold that his doubt was unreasonable.

If the law enforcement authorities wish to ensure that convictions are obtained in all cases where there is a culpable degree of intoxication - and they ought, in the interests of society generally, to wish to do so - they should press for the legislation for the use of breath analysis machines, which was enacted by Parliament as long ago as 1973, to be brought into force without further delay.

The appeal is dismissed.

I.R. Thompson

CHIEF JUSTICE

17th August, 1981