

IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 543 of 1976

THE REPUBLIC

vs.

TEMITSI ALBERT

CHARGE:

1. Driving under the influence of intoxicating liquor. C/S. 21(1) of the Motor Traffic Act 1937-1973.

JUDGMENT:

The case for the prosecution is that the accused drove a motor vehicle on the 18th of July, 1976 whilst under the influence of liquor.

It is in evidence that on the 18th of July, 1976 at about 10.30 a.m. police Constable Desmond saw a car hitting a fence and roll over. He rushed up to the car from his home and saw the accused coming out. He asked the accused as to what had happened and the accused replied that he had a domestic problem and that he was going to crash into the house of his son-in-law. The son-in-law's house is on the opposite side of the road and directly in front of his house.

At that time he got the smell of intoxicating liquor from the accused. He took him to the police station and handed him over to Sgt. Kapua.

On the question as to whether the accused was under the influence at the relevant time, there is the evidence of Sgt. Kapua who has stated that the accused's eyes were bloodshot and that when he questioned him he kept on talking without stopping. He has also stated that the accused looked sleepy and tired. Const. Desmond has also stated that he got the smell of intoxicating liquor.

Sgt. Kapua has stated in his evidence that from his experience as a police officer he can say whether a person is drunk by observing him.

The accused was not examined by a doctor and the Court has to act on the evidence of Sgt. Kapua and Police Constable Desmond on the question as to whether the accused was under the influence of liquor or not. Const. Desmond's evidence that he got the smell of intoxicating liquor does not mean in the absence of any other evidence such as signs of slurred speech and unsteady walk, that the accused was under the influence. A person could smell of intoxicating liquor but be not under the influence of intoxicating liquor.

Sgt. Kapua's evidence does not, in my opinion, prove conclusively that the accused was under the influence of intoxicating liquor. As the Court has to act on the observations of a police officer, there must be very good reasons in the observations for coming to the conclusion that the accused was under the influence; reasons such as an unsteady walk or that the accused staggered, or that his speech was slurred. The mere fact that the accused's eyes were bloodshot and that he kept on talking without stopping is not sufficient proof that the accused was under the influence of intoxicating liquor.

The prosecution has produced evidence (Exhibits X-1 to X-5) of the accused having driven his car and hitting a fence and rolling over. This is evidence of careless driving. Const. Desmond who was first at the scene does not state that when the accused got out from his car he staggered or that his speech was slurred or that he got the impression that the accused was drunk. He has only stated that he got the smell of intoxicating liquor.

Therefore, I hold that the observations made by Sgt. Kapua and police Const. Desmond as to the state in which the accused was at the time of the accident is not sufficient to prove beyond all reasonable doubt that the accused was driving the motor vehicle whilst being under the influence of intoxicating liquor. I find the accused not guilty and acquit him.

24th August, 1976.

R. L. DE SILVA
Resident Magistrate