

IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 1208 of 1976

THE REPUBLIC

vs.

ISAAC AREMWA

CHARGE:

1. Driving under the influence of intoxicating liquor: C/S 21(1) of the Motor Traffic Act, 1937-1973.
2. Driving a motor vehicle upon a Public Highway, dangerously: C/S 19(1) of the Motor Traffic Act, 1937-1973.

JUDGMENT:

The case for the prosecution is that the accused drove his car on the public highway dangerously on the 14th June, 1976 whilst being under the influence of intoxicating liquor.

As regards the accident itself the prosecution has led the evidence of Robert Grundler, the driver of the motor vehicle with which the accused collided, and Miss de Roburt, who was an eye-witness to the incident.

According to witness Robert Grundler, at about 12.45 p.m. on the day in question, on approaching the Aiwo Primary School and about 60 yards before he had to turn off the road, he turned on his blinker lights to indicate that he was turning to the right. At the point of turn, he stopped his car because there were oncoming cars. His front and rear blinkers were on at that time. When the oncoming cars passed him he looked at the rear vision mirror and found that there were no cars behind him. He then turned right to the entrance leading to the Civic Centre. After he had turned and was at the entrance he heard a bang and realised that a car had come from the rear and bumped into his side. His car was pushed sideways to a distance of about ten yards. The car of the accused was opposite his car and he saw the accused standing somewhere close by and he asked him what he had done. He could not get out of his car because the door was badly damaged and he had to get out through the left door. The accused told him that he had not given any sign that he was turning to the right and he told the accused that he had given the signal. The

accused did not answer him properly and was staggering and was not walking properly. The impact took place on the right-hand side of the road at the entrance to the Civic Centre. When he put his blinkers on, he also raised his hand in signal and it was also raised during the passage of the oncoming cars. The green light was on indicating that the signals were working.

According to Miss de Roburt, who was the only eye-witness to the incident, she saw two cars collide on the day in question at about midday. Mr. Grundler and the accused were the drivers. The car driven by the accused crashed into the rear of the utility driven by Mr. Grundler at the time the utility was taking a turn towards the Civic Centre. She heard the screech of brakes and after the screech she heard the crash. A small child at the back of the utility was thrown onto the ground heavily. She saw the accused approaching Mr. Grundler. She saw all this from her house which is about 100 yards from the scene of the accident.

The accused has given evidence and his position is that when he was about to overtake a car near the Civic Centre, he hit the driver's door with the left side of his car. He did not see any sign indicating that the car was about to turn. He was about to overtake the utility when it turned. He did not blow his horn.

As regards the charge of driving under the influence of intoxicating liquor, there is only the evidence of Mr. Grundler that the accused was not walking normally and that he was staggering. The accused, in his evidence and statement to the police, Exn "X", had admitted that he consumed liquor. In his evidence he had stated that he had only one beer before the accident.

Even if I accepted Mr. Grundler's evidence that the accused was staggering it does not necessarily mean in the circumstances that the accused was under the influence of intoxicating liquor. It may well be that the shock of the accident caused the accused to get excited and upset and in the absence of other evidence, such as smell of liquor, slurred speech, blood-shot eyes, I have no hesitation whatsoever to come to the conclusion that the evidence is insufficient to bring home a charge of driving whilst under the influence and I, therefore, find the accused not guilty on Count 1 and acquit him.

As regards the charge of driving dangerously, Mr. Grundler's evidence that he did not see any cars coming from behind when he looked into his rear vision mirror before he turned to the right indicates very strongly that the accused was travelling at an excess speed and within the short time that Mr. Drunler looked into the rear vision mirror and turned, the accused had come from almost nowhere and crashed onto his vehicle. The force of the impact can be judged by the fact that the other vehicle was pushed sideways to a distance of about ten yards. A further indication of the possible speed of the accused is Miss de Robert's evidence that she heard a screech of brakes and then the crash. Taking all the evidence into consideration the accident seems to have occurred as a result of the accused coming at an excessive speed and trying to overtake the car without sounding his horn which is an omission on his part and in not keeping a proper lookout and seeing the blinkers working on the car in front. It is not sufficient for the car coming from behind to put its blinkers indicating that it is overtaking. This is a sign to the cars in front and to the cars behind and not a sign for the car that is being overtaken. Section 16(1)(j) of the Motor Traffic Act requires a car that is overtaking another vehicle on the road to sound its horn.

There is no doubt that the accused was driving at an excessive speed and I reject his evidence that he was driving at about 30 miles per hour at the time of the incident. I, therefore arrive at the irresistible conclusion that the accident occurred due to the dangerous driving on the part of the accused and I find him guilty on Count 2 and convict him.

19th January, 1977.

R. L. DE SILVA
Resident Magistrate