SUPREME COURT OF NAURU

CRIMINAL APPEAL NO. 5 OF 1981

KARL JIRONC V. DIRECTOR OF PUBLIC PROSECUTIONS

J U D G M E N T

The appellant was convicted by the District Court on three counts, the first of driving a motor vehicle while under the influence of intoxicating liquor, the second of driving a motor vehicle negligently, and the third of failing to comply with a traffic control sign. He was sentenced to one month's imprisonment with hard labour on the first count and fined $75 and $10 respectively on the second and third counts. He has appealed against conviction on the first two counts and against sentence on all the counts.

So far as the second count is concerned, there was ample evidence upon which the learned magistrate could reasonably find that the appellant drove negligently. Two prosecution witnesses gave evidence that the appellant's car came out of a side road and turned left onto the main island road a short distance in front of their police car and then almost immediately turned right into another side road, in the process crossing in front of a motor cycle travelling in the opposite direction on the main island road and causing it to slow down. The appellant gave evidence that the police car was some considerable distance away when he drove out of the side road and that he did not see any motor cycle coming in the opposite direction along the main island road. But the learned magistrate believed the prosecution witnesses; although there were minor discrepancies between their evidence, they were of the kind which adds verisimilitude to evidence rather than detracting from its credibility. There was, therefore, no reason why the learned magistrate should not have accepted their evidence. That being so, as the only ground of appeal against the conviction of the appellant on the second count is that the finding of guilty was unreasonable and against the weight of the evidence, that appeal must fail.

The appeal against the appellant's conviction on the first count is on the same single ground. However, in argument Mrs Billeam submitted also that the learned magistrate took into account as probative of intoxication facts of which there was an innocent explanation or which were, at the least, equivocal.

So far as the findings of primary fact are concerned, there was no reason why the learned magistrate should not have found them as he did, relying on the evidence of the prosecution witnesses. However, secondary facts in this case the fact that the appellant was intoxicated and the fact that his intoxication was such as to have been likely to have had a substantially detrimental effect on his driving skills - could properly be inferred from those primary facts only if there was no other inference which could reasonably be drawn from them.

The primary facts found fell into two categories; they were -

(1) the appearance and conduct of the appellant, other than his actual driving of his motor vehicle; and

(2) the manner in which he drove his motor vehicle.

The learned magistrate approached his task of considering what inferences could properly be drawn from the primary facts by considering first what could be inferred from those in the first category. He concluded that they established that the appellant "was really under the influence of intoxicating liquor while he was driving his mini moke that night". He then went on to consider whether an inference could be drawn that the degree of the appellant's intoxication was such as to have been likely to have had a substantially detrimental effect on his driving skills. He concluded that it was, in reaching that conclusion he relied entirely on the manner in which the appellant drove his motor vehicle. He did not rely for it on the primary facts in the first category.

The manner in which the appellant drove was certainly negligent and inconsiderate of the other road users affected by it. But it was not so bad as to be categorised as reckless or dangerous. Indeed, regrettably, it merely conformed to the abysmally low standard of much of the driving observable daily on the roads of Nauru, driving by persons of undoubted sobriety but lacking consideration for others. It was certainly not such as to permit of an inference being drawn from it as to the degree of the appellant's intoxication. The learned magistrate erred in drawing from it the inference that the appellant's intoxication was such as to have been likely to have had a substantially detrimental effect on his driving skills.

I have considered whether the learned magistrate ought to have drawn such an inference from the primary facts in the first category. In many cases such an inference is the only one which can reasonably be drawn from facts of that nature. In this case, if there had not been a

possible innocent explanation of the appellant's unsteadiness on his feet, I think that the learned magistrate would have erred if he had not drawn such an inference from the primary facts which he found proved.

However, I am satisfied that he cannot be regarded as having erred in limiting the inference which he drew from the other indicia of intoxication which were proved, that is to say in concluding from that evidence only that the appellant was intoxicated without drawing any conclusion as to the degree of his intoxication. That being so, the appeal against conviction on the first count must be allowed.

The sentences imposed in respect of counts 2 and 3 are neither harsh and excessive nor wrong in principle. They relate to entirely separate offences; that is to say, neither is wholly comprised within the other. So section 16 of the Criminal Code of Queensland, in its application to Nauru, has not been contravened.

The appeal against the conviction of the appellant on the first count is quashed and the sentence set aside; the appeal against his conviction on the second count and against the sentences imposed in respect of those counts is dismissed.

5th May, 1981 CHIEF JUSTICE