

REGINA

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v.

URAKMATA KONROTE

[SUPREME COURT, 1965 (Mills-Owens C.J.), 12th October]

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Revisional Jurisdiction

Criminal law—Rotuma District Officer's Court—jurisdiction—revision—conviction set aside—record treated as containing recommendations of District Officer under s.11(4) of Rotuma Ordinance—conviction entered thereon by Chief Justice—Rotuma Ordinance (Cap. 106) s.11,11(4)(6)—Traffic Ordinance (Cap. 235) ss.28(6), 33(1)(2)—Criminal Procedure Code (Cap. 9) s.5(1)(2), First Schedule.

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There is no Magistrate's Court, by that style or title, in Rotuma but the District Officer's Court has, under section 6 of the Rotuma Ordinance, the jurisdiction of a magistrate empowered to hold a magistrate's court of the second class. The District Officer's Court has therefore jurisdiction to try the offence of driving a motor vehicle when under the influence of drink contrary to section 33(1) of the Traffic Ordinance only if the accused has consented to such trial. Under section 11 of the Rotuma Ordinance the District Officer's Court has jurisdiction to "try" such an offence as an indictable offence, the verdict and sentence being arrived at by the Chief Justice on a perusal of the record and with the aid of the comments on the evidence and the recommendations of the District Officer.

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Determination and sentence of the District Officer's Court set aside by the Chief Justice on revision, and verdict of guilty recorded and sentence passed under section 11 of the Rotuma Ordinance.

Proceedings on revision. The parties were unrepresented.

MILLS-OWENS C.J.: [12th October, 1965]—

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The accused was charged before the Court at Rotuma with the offence of driving a motor vehicle when under the influence of drink contrary to section 33(1) of the Traffic Ordinance. He pleaded guilty and thereupon the District Officer recorded a conviction and sentence of a fine of £7. 10. 0 or in default 6 weeks' imprisonment; in addition, disqualification from driving for a period of six months was imposed.

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There is in fact no Magistrate's Court, by that style or title, in Rotuma. The provisions of section 5 and 6 of the Rotuma Ordinance read as follows:

"5. There shall be established for Rotuma a Court of Justice to be styled the District Officer's Court which shall consist of and be holden by the District Officer.

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6. The District Officer shall, *ex officio*, be a magistrate within Rotuma and shall, save as hereinafter set forth, have the same jurisdiction in all civil and criminal suits and matters as a magistrate empowered to hold a magistrate's court of the second class."

It is clear that although the papers are headed "In the Magistrate's Court at Rotuma", since the presiding judicial officer was the District Officer at Rotuma it was in fact the District Officer's Court which was sitting in which the District Officer, Rotuma has the summary jurisdiction of a magistrate empowered to hold a magistrate's court of the second class. The error in the entitlement of these proceedings was, in my view, a clerical error in nomenclature of no material significance and therefore not fatal to the essential validity of the proceedings.

The offence of driving when drunk under the provisions of section 33(1) of the Traffic Ordinance (Chapter 235) is an offence punishable by imprisonment for a period of two years or by a fine or by both such imprisonment and fine. The powers of courts to try offences under laws other than the Penal Code are prescribed by section 5 of the Criminal Procedure Code which reads as follows:

"5.(1) Any offence under any law other than the Penal Code shall, when any court is mentioned in that behalf in such law, be tried by such court.

(2) When no court is so mentioned, it may, subject to the proviso to subsection (1) of section 4 and the other provisions of this Code, be tried by the Supreme Court, or by any magistrate's court by which such offence is shown in the fifth column of the First Schedule to be triable."

The appropriate part of the First Schedule to the Criminal Procedure Code which applies to such cases appears at the end of the Schedule under the sub-heading "Offences under other laws". References to this part of the First Schedule shows that offences which are punishable by imprisonment for one year or upwards but less than three years are triable by a magistrate's court of the first class, or with the consent of the accused in a magistrate's court of the second class. It is clear, therefore, that the District Officer's Court of Rotuma is only empowered to try an offence of driving when drunk under the provisions of section 33 of the Traffic Ordinance if the accused has consented to be tried by such Court.

In this present case, according to the record, the accused was not asked whether he consented to be tried by the District Officer's Court of Rotuma. In the absence of such consent that Court did not have jurisdiction to try him summarily. The Court does, however, have jurisdiction to deal with indictable cases under the provisions of section 11 of the Rotuma Ordinance. In the context of that Ordinance an "indictable offence" is one which is beyond the jurisdiction of the District Officer's Court itself to determine. If the position in Rotuma were the same as elsewhere in Fiji there would be no alternative but to regard the proceedings in the present case as a nullity. But under section 11 of the Rotuma Ordinance the District Officer's Court is

empowered to "try" charges for indictable offences (other than capital offences), the verdict and sentence in such cases being arrived at by the Chief Justice on a perusal of the record and with the aid of the comments on the evidence and recommendations of the District Officer. If therefore in the present case the District Officer's Court had dealt with the case as an indictable one the only difference would have been that the Court would have recommended a verdict of guilty, on the plea of guilty, instead of formally recording a conviction, and would have recommended, instead of actually imposing, the sentence. In all the circumstances the departure from the procedure laid down appears to me to be of such a formal and insubstantial character that I may properly treat the conviction recorded and sentence imposed as recommendations made as upon a trial for an indictable offence. Having regard to the lapse of time, owing to the difficulties of communication, it would be in the interests of justice to do so, provided that the sentence is not interfered with except so far as the law strictly requires.

Accordingly in the exercise of my powers of revision and pursuant to the provisions of the Rotuma Ordinance I set aside the determination made and sentence passed by the District Officer's Court and treat the record as containing the recommendations of the District Officer under the provisions of section 11(4) of the Rotuma Ordinance. Dealing then with the case in accordance with the provisions of section 11(6) of that Ordinance I hereby record a verdict of guilty of the offence of driving a motor vehicle when under the influence of drink, contrary to the provisions of section 33(1) of the Traffic Ordinance, and pass a sentence of a fine of £7. 10. 0 and in default of payment a sentence of six weeks' imprisonment. Under the provisions of section 33(2) of the Traffic Ordinance, in the absence of special reasons, it is mandatory upon a conviction of driving when drunk for the Court to order that the accused be disqualified for a period of not less than 12 months from the date of conviction. There are no special reasons in this case and I do therefore order that the accused be disqualified for a period of 12 months from the date of this conviction from holding or obtaining a driving licence.

I direct that the District Officer's Court do inform the defendant accordingly; and do send notice of the conviction and order of disqualification to the Licensing Authority by which the accused's driving licence was granted and to the Licensing Authority in whose area the accused resides; and do forward his licence to the authority by which it was granted in accordance with the provisions of section 28(6) of the Traffic Ordinance.

Determination and sentence set aside and verdict of guilty substituted.

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