

IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 201/76

THE REPUBLIC

v

KARUA DEIRANAUAU

CHARGE:

1. Driving under the influence of intoxicating liquor. Contrary to Section 21 of the Motor Traffic Act 1937-1973.
2. Driving while unlicensed. Contrary to Section 23(1)(a) of the Motor Traffic Act 1937-1973.
3. Driving unregistered motorcycle. Contrary to Section 17(1) of the Motor Traffic Act 1937-1973.

JUDGMENT:

The case for the prosecution is that on the 27th March, 1976 the accused was detected at about 8:20 A.M. driving a motorcycle on the Public Highway whilst under the influence of intoxicating liquor.

Police Constable Kepae stated in his evidence that on the morning in question he saw the accused in front of him riding a motorcycle and zig-zagging on the road. He suspected the accused to be intoxicated and stopped him opposite the Nauru General Hospital. He questioned him as to why he was zig-zagging and the accused replied that he could not control the handlebar and gave no reasons. He asked him whether he was intoxicated and the accused said, "Yes, but not too much". He then requested the accused to follow him to the Police Station and later took him to the Nauru General Hospital to be examined by Dr. Kiki Thoma. There was a smell of liquor and an unusual smell from the accused. His facial appearance was flushed. The accused had a pillion rider, Charlie Biang, who also smelled of liquor.

Sgt. Moses, who was the desk sergeant when the accused was brought to the Police Station, has stated that he observed the accused to be intoxicated. The accused could not stand properly on his feet and he was swaying. His speech was slurred and he smelt liquor from his breath.

The prosecution has tendered the medical report of Dr. Kiki Thoma as Exhibit A. According to the report the accused had slurred speech and swayed on walking with an occasional stagger; he was slightly affected by intoxicating liquor and his ability to drive a vehicle would likewise be slightly affected.

Mr. Aroi, pleader for the accused, has submitted that being slightly affected did not bring the accused within the meaning of "being under the influence". He further submitted the evidence of Police Constable Akeida as regards zig-zagging was because the pillion rider caused the accused to drive in that way.

The defence has not called Charlie Biang, who was the pillion rider. Charlie Biang, according to Constable Kepae, has a physical deformity and was sitting in an odd manner on the pillion of the motorcycle. But this does not mean that the rider was, in any way, affected by the unusual way in which the pillion rider was sitting. The accused, when questioned by Constable Kepae, did not state that he could not control the handlebar because of the pillion rider. Therefore, the submission of Mr. Aroi must necessarily fail in view of the fact that there is no evidence before the Court to support it.

As regards the submission that "being slightly affected" did not bring the accused within the meaning of "being under the influence", the evidence of the two police officers that the speech of the accused was slurred; he swayed on walking; he could not stand properly on his feet and that he smelt of liquor. Constable Kepae questioned the accused as to whether he was intoxicated and the accused replied, "Yes, but not too much".

These are the observations of experienced police officers and their evidence is corroborated by the medical report, Exhibit A. I accept the evidence of the two police officers as they corroborate each other on all material particulars.

Therefore, the mere fact that Dr. Kiki Thoma had used the words "slightly affected by intoxicating liquor" instead of "slightly influenced by intoxicating liquor" does not, in my opinion, affect the prosecution case. Therefore, Mr. Aroi's submission on this Count 2 must necessarily fail.

As regards Count 3, Mr. Aroi submitted that there is no evidence before the Court that the accused, on the morning in question, was driving a Honda motorbike. The prosecution has tendered a certificate from the Registrar of Motor Vehicles, marked Exhibit B, giving particulars of the motorcycle and the fact that it was not registered. The particulars given in the certificate states that the motorcycle is a Honda Minibike, yellow in colour. There is a doubt as to whether the certificate refers to the motorcycle that the accused was riding on the morning in question. According to the prosecution evidence the accused was driving a motorcycle and there is no evidence that it was a Honda minibike. I am, therefore, inclined to accept the submission of Mr. Aroi that there is no evidence that the accused was driving the motorcycle referred to in the certificate.

For this reason, I find the accused not guilty on Count 3 and acquit him.

I find the accused guilty on Count 1 and convict him.

12th April, 1976

R. L. DE SILVA  
Resident Magistrate